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Tuesday
November 30, 1982

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Environmental Protection Agency

Animal Biologics
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Arms and Munitions
Alcohol, Tobacco and Firearms Bureau

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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

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect the transfer of the responsibilities of the Senior Official, as designated under the Paperwork Reduction Act of 1980, from the Executive Assistant to the Secretary to the Assistant Secretary for Administration.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: John E. Carson, Director, Office of Finance and Management, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447–7559.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (Pub. L. 96–511) required each agency head to designate a senior official to carry out the responsibilities of the agency under the Act. The Secretary initially designated the Executive Assistant to the Secretary to be that official. An Information Resources Management Task Force (IRMTF) was established to assist and support the Executive Assistant to the Secretary.

However, it has been determined that the ongoing activities of the IRMTF should be assigned to a permanent organization to ensure continuity in implementing the provisions of the Paperwork Reduction Act of 1980. As a result of a recent reorganization of staff offices reporting to the Assistant Secretary for Administration, it was determined that he was in a position to assume the duties of the Senior Official, and was so designated by the Secretary. This document reflects that designation and transfers to the Assistant Secretary for Administration the authority formerly delegated to the Executive Assistant to the Secretary. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by revoking and reserving paragraph (f)(2) and by revising paragraphs (c)(4), (f)(1) and (f)(9) to read as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) *Related to operations.*

* * * * *

(4) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies. This includes the promulgation of Department directives regulating the management or related contracting and procurement functions.

* * * * *

(f) *Related to information resources management.*

(1) Designated as the senior official to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980. This designation includes the following responsibilities:

(i) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department.

(ii) Developing Department information policies and procedures and overseeing, auditing and otherwise periodically reviewing the Department's information resources management activities.

(iii) Reviewing proposed Department reporting and recordkeeping requirements including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department.

(iv) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs.

(v) Conducting and being accountable for acquisitions made by the Department pursuant to authority delegated under section 111 of the Federal Property and Administrative Services Act of 1949, as amended.

(vi) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1980, including the review of Department information activities.

(2) [Reserved]

* * * * *

(9) Administer the Departmental records, forms, reports, and directives management programs.

* * * * *

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.43 [Reserved]

3. Section 2.43 is revoked and reserved.

For Subparts C and D:

Dated: November 24, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-32666 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 275

[Amdt. No. 233]

Tightened Expedited Service Eligibility; Interim Rule and Request for Comments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rulemaking; request for comments.

SUMMARY: This interim rulemaking amends the current expedited service provisions in the Food Stamp Program regulations in accordance with the Food Stamp Act Amendments of 1982 (Pub. L. 97–253, enacted September 8, 1982). These changes will: (1) Impose a maximum allowable limit of $100 in liquid resources and limit expedited service to households with less than $150 in monthly gross income, or destitute migrant or seasonal farmworker households; (2) define expedited service as providing food stamp benefits no later than five calendar days from the application date; and (3) require verification of income and liquid resources to the extent practicable within the expedited service timeframes. The interim rule will effect savings in Food Stamp Program expenditures and simplify Program administration by State agencies.

DATE: This interim rule is effective November 30, 1982, to be fully implemented no later than February 1, 1983. Comments must be received on or before February 28, 1983, in order to be considered.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

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; (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

This regulation does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

This rule has been reviewed under Executive Order 12291 and the Secretary's Memorandum No. 1512–1. The Department has classified this rule as a non-major rule. In accordance with the Food Stamp Act Amendments of 1982 (Pub. L. 97–253), this rule will revise expedited service provisions in the current Food Stamp Program regulations to allow more State agency administrative flexibility and reduce fraud, waste, and abuse. In addition, this rule will not result in a major increase in costs to State or local government agencies. This rule will also not result in a major increase in costs or prices for consumers or individuals and will not have a significant effect on competition, employment, productivity, investment, or foreign trade. Further, this rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises.

The Department of Agriculture has also determined, in accordance with 5 U.S.C. 553(b)(1)(B), that notice of proposed rulemaking and public comment procedures prior to the effective date of this rule are impracticable and that good cause exists for an effective date on this rule less than 30 days after publication. Section 193 of the Food Stamp Act Amendments of 1982 (Pub. L. 97–253) establishes the enactment date of the 1982 Amendments as the effective date for the expedited service provisions. The Food Stamp Act Amendments of 1982 were enacted September 8, 1982. An interim rule will ensure compliance with the effective date for expedited service provisions mandated by law. Finally, the interim rule has 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 rulemaking does not have a significant economic impact on a substantial number of small entities. This interim expedited service rule will not place any requirements on small businesses or small organizations. The State and local welfare agencies are affected to the extent that they administer the current program.

Background

Section 11(e)(9) of the Food Stamp Act of 1977 requires that households with no income, after appropriate exclusions and deductions, be provided expedited certification and issuance services. 7 U.S.C. 2020(e)(9). This legislation was embodied in regulations published October 17, 1978 in the **Federal Register** (43 FR 47846).

Current regulations, provide that coupons or authorization documents (ATP's) for expedited service households be mailed no later than the close of the second working day following the date of application, or be available for pickup no later than the start of the third working day following application filing (7 CFR 273.2(i)(3)). The first day of this count is the working day after filing. Households which do not receive expedited service, but receive normal processing, must have a determination of eligibility and, if eligible, be given an opportunity to participate within 30 days from filing an application.

Food Stamp Program regulations identify two different types of no income households: (1) Households with no anticipated monthly income after appropriate exclusions have been accounted for and various deductions have been subtracted from its gross income (§ 273.10); and (2) households that are determined destitute (§ 273.10(e)(3)).

A household is destitute if its only income for the month of application (1) is received prior to application and is from a terminated source, or (2) is from a new source from which less than $25 is to be received in the 10 days following application. The destitute provision was developed to take into consideration certain households with unusual income receipt patterns and take into account the *Gutierrez v Butz*, 415 F. Supp. 827 (USDC D.C. 1976) court decision.

In order to meet the timeframe for expedited service benefit delivery, the regulations provide that, except for identity and, whenever possible, residency, verification may be postponed if it cannot be obtained within the expedited processing timeframes. If verification was postponed and the household was certified for the month of application,

the household must reapply and complete the verification requirements which were postponed. If the household is certified for longer than one month, no further benefits are issued until the postponed verification is completed.

This interim rule amends the expedited service provisions in three areas: application processing timeframe; eligibility criteria including the destitute category; and verification. In addition, this rule revises the managment evaluation component of the Performance Reporting System (7 CFR Part 275) to reflect this rulemaking's expedited service changes.

Application Processing Time

As explained earlier, current expedited service timeframes are two to three working days. In many cases, State agencies are precluded from verifying important eligibility factors because of these abbreviated timeframes. The Food Stamp Act Amendments of 1982 extends the expedited service timeframes to five days. This interim rule incorporates that legislative provision.

The language of the amendment does not specifically state whether Congress intended the five-day processing period to mean five working days or five calendar days. Floor statements by members of Congress, however, strongly indicate that the five-day provision means five calendar days (Congressional Record H6098 (daily ed. August 17, 1982); Congressional Record S1127 (daily ed. August 20, 1982)).

A longer timeframe than the current one eases the administrative burden that State agencies have as a result of the expedited service requirement. According to the General Accounting Office, the number of households applying for food stamps under expedited service in 36 States ranged from under ten percent to 75 percent.

In thirteen of the States, more than 35 percent of new cases were processed under expedited service. (Senate Report No. 97–504, 97th Congress 2nd Session, pages 52–53 (1982)). Longer processing periods would ease both deadline pressure and disruptions in workflows caused by expedited service cases having priority over other cases. Additionally, a longer processing time would allow more time for verification.

Out-of-Office Interviews.

The current regulations specify that if a household is entitled to expedited service and is also entitled to a waiver to the office interview, the State agency must conduct the interview within one working day following the date the application was filed. If a telephone interview is conducted and the application requires a signature, the State agency must mail the application to the household on the same day of the interview.

This interim rule requires that the State agency conduct the interview and otherwise complete the application process within the expedited service timeframes. The first day of this count is the calendar day after application filing (i.e., receipt of an application containing the applicant's name and address and signed by the applicant or authorized representative). If a telephone interview is conducted and the application must be mailed to the household for a signature, the mailing time will not be counted towards the five calendar days. For expedited service purposes, mailing time means the days the application is in the mail to and from the household. Mailing time will also include the days the application is in the household's possession pending signature and mailing. This change in the out-of-office interview provision is made in light of the extended expedited service timeframes.

The Department had considered changing only the processing time in the current policy. This approach was rejected for several reasons. First, it would have left in place a procedure that was needlessly complex. The current procedure requires State agencies to have systems in place to allow them to act on applications within one working day of submittal and then take other action within three days of the completed application being returned. Second, it would have given State agencies more time to process an application which, by definition, was already completed. This would have resulted in a delay in benefit delivery to people who had met the Congressionally determined criteria of being in need of fast service. Finally, if current policy was retained, a further complicated procedure would have needed to have been developed to ensure that applicants did not lose benefits they were entitled to: a method to ensure that the day they filed signed applications would be the day used to prorate benefits even though another day was the first day for processing the application.

The Department believes that the procedure in these rules simplifies the current policy greatly and achieves the same end. It defines the date an application is filed the same way in this situation as it is defined in other cases. It precludes a special procedure to account for proration policy. It leaves to State agencies the decision when to interview people receiving out-of-office service but protects applicants in that all activity will have to be done within five calendar days. It does not hold State agencies accountable for time lost while applications are in the mail to and from applicants, and it puts responsibility for benefit delivery somewhat on applicants since they can lengthen or shorten processing times by delaying or quickly providing the information needed on the application.

Household Eligibility

As explained earlier in this preamble, the current regulations identify two different types of no income situations which result in expedited service processing: households with zero net income and households determined to be destitute. The Senate Report on S. 2774 states:

"* * * the use of a net, rather than gross income standard, the lack of any standard as to liquid assets, and the loophole opened up by the 'destitute household' rule have made expedited service an often noted area of abuse." (Senate Report No. 97–504, 97th Congress, 2nd Session, page 54 (1982)).

The Food Stamp Act Amendments of 1982 substantially changed the Food Stamp Act's expedited service eligibility provisions. A new income test mandated by the legislation limits expedited service to households with less than $150 in monthly gross income and destitute migrant or seasonal farmworker households. While the destitute provision has been retained by the new legislation, the provision only applies to migrant or seasonal farmworker households. The legislation also imposes a liquid resource limit of $100. Liquid resources are cash on hand, checking and savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8).

With regard to migrant or seasonal farmworkers, Congress retained special provisions for these households. The House Report on H.R. 6892 states:

"The committee continues to feel that the special circumstances of migrant and seasonal farmworkers warrant continued protection for expedited service eligibility * * * To ensure continued protection for migrant and seasonal farmworker households under the destitute provisions, the Committee wrote into law the safeguards now contained only in USDA regulations. The Committee wishes to make clear that the current regulations regarding expedited service eligibility and benefit levels for destitute households must remain intact for migrant and seasonal farmworker households." (House Report No. 97–687, 97th Congress, 2nd Session, p. 53 (1982)).

The new tests for expedited service will limit its availability to those persons who have no access to

resources to meet their immediate food needs. Additionally, State agencies will be able to make a more careful eligibility determination since the burden of verification is lessened by the simple tests for expedited service.

Verification

As explained earlier in the preamble, in order to meet the timeframe for expedited service benefit delivery, current regulations provide that, except for identity and whenever possible, residency, verification may be postponed. Prior to the Food Stamp Act Amendments of 1982, the Act did not address verification for households processed under the expedited service provision.

The 1982 legislation requires State agencies to verify income and liquid resources to the extent practicable, prior to the issuance of benefits. This interim rule incorporates this legislative change. Except for the new emphasis placed on resources, the verification requirements in current expedited service procedures remain basically unchanged by this rule. The interim rule retains the provision of the current rule which requires, in all cases, verification of the applicant's identity. Additionally, the rule retains the current requirement regarding verification of residency and specifically states that the State agency should also make all reasonable efforts to verify, within the expedited service timeframes, the household's residency, income statement, and liquid resources, as well as all other factors required by 7 CFR 273.2(f). Verification of identity and residency is important to ensure that the applicant is properly identified and that the household lives within the proper project area. To ignore these requirements for expedited service households could subject the program to widespread abuse. Verification of income and liquid resources is important because these two factors determine eligibility for expedited service.

Management Evaluation Reviews

Finally, this rule amends the current Management Evaluation Review provisions to reflect this rulemaking's provision which extends the expedited service timeframes to five calendar days.

Implementation

State agencies shall implement the provisions of this rule no later than February 1, 1983.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting requirements.

Accordingly, this interim rule amends Parts 271, 272, 273, and 275 as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.7 [Amended]

In § 271.7(e)(2)(ii), second sentence, remove the word "two" and replace with the words "five calendar".

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

A new paragraph (g)(53) is added to § 272.1 as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(53) *Amendment 233.* State agencies shall implement these regulations no later than February 1, 1983.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.2:

a. Paragraphs (i)(1) is revised.

b. Paragraph (i)(3) (i) and (iii) is revised.

c. In paragraph (i)(4)(i), the first three sentences are revised.

§ 273.2 Application processing.

* * * * *

(i) *Expedited Service.*—(1) *Entitlement to Expedited Service.* The following households are entitled to expedited service provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100:

(i) Households with less than $150 in monthly gross income, as computed in § 273.10; or,

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3).

* * * * *

(3) *Processing standards.* * * *

(i) For households entitled to expedited service, except as specified in paragraphs (3)(ii) through (3)(iii) of this section, the State agency shall mail or have available for pickup the household's ATP or coupons no later than the close of business on the fifth calendar day following the day the application was filed.

(ii) * * *

(iii) *Out-of-office interviews.* If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing. If the State agency conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be calculated in the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.

* * * * *

(4) *Special procedures for expediting service.* * * *

(i) In order to expedite the certification process, the State agency shall use the following procedures: (A) In all cases, the applicant's identity (i.e., the identity of the person making the application) shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section. (B) All reasonable efforts shall be made to verify within the expedited processing standards, the household's residency, income statement (including a statement that the household has no income), liquid resources and all other factors required by § 273.2(f), through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because these eligibility factors have not been verified. * * *

* * * * *

2. In § 273.10(e)(3), the introductory paragraph and introductory text of (i) and (ii) are revised; (vi) is removed and (vii) and (viii) are redesignated (vi) and (vii) respectively. In the newly redesignated (vi), the second sentence is removed.

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit level.* * * *

(3) *Destitute households.* Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) * * *

(B) * * *

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(A) * * *

(B) * * *

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

Section 275.8(b)(2)(xii) is revised as follows.

§ 275.8 Review coverage.

* * * * *

(b) *Certification Requirements.* * * *

(2) * * *

(xii) The project area either mails or provides for the pick-up of either coupons or an ATP to households eligible for expedited service by the close of business on the fifth calendar day following the date of application.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

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

Dated: November 23, 1982.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 82-32596 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-30-M

Commodity Credit Corporation

7 CFR Part 1430

Dairy Products

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the procedure for implementing certain changes in the dairy price support program. Such changes are authorized by section 101 of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253), which provides that during the period of October 1, 1982, through September 30, 1985, the Secretary of Agriculture may provide for the deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. Deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the price support program. The deductions also are intended to encourage a reduction in milk production. Because of the substantial purchases of dairy products by the U.S. Government under the support program, the Secretary has determined that the deductions should become effective on December 1, 1982. Proposed regulations for implementing the dairy collection plan were developed by the Department and published in the **Federal Register** on September 24, 1982 (47 FR 42112), for public comment. The final regulations reflect only minor changes from the proposed regulations.

EFFECTIVE DATE: December 1, 1982.

FOR FURTHER INFORMATION CONTACT: Alfred E. LaLiberte, Chief, Operations Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as a "major" action since the rule will result in an annual effect on the economy of $100 million or more.

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

It has been determined that the Regulatory Flexibility Act is not applicable to this final 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 final rule.

Statutory Authority for Final Rule

Section 201 of the Agricultural Act of 1949 (the "Act") was amended on September 8, 1982, by section 101 of the Omnibus Budget Reconciliation Act of 1982 to specify that during the period of October 1, 1982, through September 30, 1985, the Secretary may provide for a deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. These deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the price support program. The authority does not apply for any fiscal year for which the Secretary projects that the annual price support purchases will be less than 5 billion pounds milk equivalent. If at any time during a fiscal year the Secretary estimates that the net price support purchases during that year will be less than 5 billion pounds, the authority for making deductions does not apply for the balance of the year.

It has been estimated that the net price support purchases of milk or the products of milk will exceed 5 billion pounds milk equivalent for the 1982–83 marketing year.

Summary of Final Rule

The final rule sets forth the administrative procedures that will be used to implement the deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. The provisions of the final rule will apply only to the milk that is marketed commercially by producers during those months for which the Secretary has announced that the deductions are required.

The Dairy Division of the Department's Agricultural Marketing Service will administer the regulations and will be responsible for the collection and verification of all monies deducted for remittance to the Commodity Credit Corporation.

The regulations specify that any individual, partnership, corporation, association or other business or governmental unit that pays the individual producer for his milk will be the "responsible person" for remitting to

the CCC the deduction of 50 cents per hundredweight from each producer's proceeds. Additionally, a producer who markets all or part of his own production in the form of milk or milk products to consumers, either directly or through retail or wholesale outlets, also is defined as a "responsible person" for remitting monies to the CCC. Such a producer will be required to remit an amount equal to 50 cents per hundredweight on the quantity of his own production used in such marketings. If the producer has additional milk production that is marketed to another "responsible person," the person receiving the milk will be required to make the deduction on that milk.

For milk marketed during a particular month, the regulations prescribe that the deductions from a producer's proceeds are to be remitted to the CCC by the last day of the following month or on the same date that final payment is made to the producer for such milk, whichever is earlier. Deductions may be made at the time partial payments and/or final payments are made to the producer. In the case of a producer who markets milk of his own production during the month to consumers, such person will be required to remit the money due the CCC by the last day of the following month.

When remitting the monies to the CCC, each responsible person will be required to submit a report showing: (1) The identity of the responsible person, including such person's business address, (2) the month in which the applicable producer marketings occurred, and (3) the total amount of milk to which the remittance applies.

The regulations also provide that the amounts due the CCC are to be remitted in the form of a check made payable to the "Commodity Credit Corporation." Checks and related reports are to be mailed to the location designated by the Dairy Division in its instructions to responsible persons. A charge of $25 will be imposed on a responsible person for any check issued to the CCC that is not honored because of insufficient funds.

A late-payment charge will be assessed with respect to any responsible person's obligation that is due the CCC but which is remitted late, as determined by the postmark date. Such late-payment charge will be applied on the first day after the date that such obligation was due and will be applied again on the same day of each succeeding month to any such outstanding obligation, including any outstanding late-payment charge, until the obligation is paid. The amount of the late-payment charge will be based on a rate of interest determined periodically by the CCC, which currently is 17 percent per year.

Each responsible person will be required to maintain certain records for the purpose of demonstrating compliance with the regulations. Also, such persons will be required to make available all records and facilities pertaining to their operations as are necessary for determining compliance. In addition, all records that are required to be made available are to be retained by the responsible person for a period of three years, which begins at the end of the month to which such records pertain, unless the Dairy Division notifies the responsible person that such records are necessary in connection with litigation for a longer period. In such case, such records are to be retained until the litigation is terminated or a waiver is granted by the Dairy Division.

Response to Public Comments

On September 24, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 42112) inviting the public to comment on proposed regulations for carrying out the administrative procedures of the dairy collection plan. The Department received comments from more than 25,000 sources. Included were a number of petitions containing nearly 23,000 signatures. The comments were from dairy farmers, cooperative associations, processors of dairy products, handler and producer trade associations, general farm organizations, and other farm-interested persons, businesses, and organizations.

The vast majority of the comments were in opposition to the Secretary's determination that effective December 1, 1982, a deduction of 50 cents per hundredweight will be made from the proceeds of the sale of all milk marketed commercially by producers. Comments of this nature, although not relating to the specific procedures for carrying out the dairy collection plan on which comments were invited, nevertheless were reviewed by the Department. However, the extremely serious surplus production situation and the very substantial government expenditures for the purchase and storage of surplus dairy products mandate implementation of the dairy collection plan.

There were 23 comments received that addressed the procedures for carrying out the dairy collection plan as set forth in the proposed regulations. Of these, 7 comments were from dairy cooperatives, 7 from processors of dairy products, 7 from trade associations of producers and dairy product processors, 1 from a State government, and 1 from an individual not representing a group. The comments either included recommendations for changing certain provisions of the proposed regulations or requested an interpretation of certain facets of the regulations. The following discussion summarizes the comments received and the Department's response to them.

A number of comments, including those from organizations representing a great many of the country's dairy cooperatives and milk processors, pertained to when a responsible person should remit the required deductions to the CCC. The proposed regulations provided that the deductions were to be remitted by the last day of the month after the month in which the milk was marketed, or at the time of making final payments to producers for such milk, whichever was earlier. Respondents asked instead that the deductions by all responsible persons not be due until the last day of the month after the month in which the milk was marketed.

In urging this change, respondents indicated that a single remittance on the last day of the month would simplify procedures and would reduce the administrative burden on those responsible persons who operate in a number of markets and who have several varying final payment dates. It was also indicated that the single end-of-month remittance date, with deductions being held by responsible persons for several days, would permit such persons to be compensated for administrative costs under the collection plan through the use of the money for a limited period. Other respondents stated that all remittances should be due on the same date to assure equity among all competing handlers.

The requested change in the remittance date has not been adopted. The need to use good business and management practices supports the policy that remittances to the CCC be made by the time final payments are made each month to producers. This will enable the CCC to reduce operational costs of the dairy price support program by reducing its interest costs for borrowed money.

Comments were received concerning the priority of the 50-cent per hundredweight deductions from producers' milk checks in relation to deductions that producers may have authorized handlers to make from producers' payments in accordance with assignments to banks or other parties. Respondents pointed out that the regulations should specifically state that

the 50 cents must be deducted before any amounts assigned are subtracted from a producer's milk check. They indicated that such specificity was needed, in part, because of possible conflicts with other programs operated by the Federal government (e.g., Farmers Home Administration loans).

Although the proposed regulations need not be modified with respect to this point, it is appropriate to clarify the priority that the 50-cent deductions have relative to producer assignments. The 50-cent per hundredweight deduction under the dairy collection plan is a deduction required by statute. The money deducted is not available for distribution to producers and cannot be subject to assignment priorities established by producers. Responsible persons must make the deductions regardless of whether or not there are sufficient funds in the proceeds due a producer to meet his other obligations.

A number of comments were received from California dairy interests, including the California Department of Food and Agriculture, recommending that the State of California Director of Food and Agriculture be the collecting and remitting agent for all California-based responsible persons. Under this suggested arrangement, the amount due the CCC by each person paying individual dairy farmers in California would be collected by the California Director of Food and Agriculture through the operation of the California Milk Pooling Plan and through other means for certain manufacturing operations not under the Plan.

A similar recommendation by a dairy plant operator and a trade association of milk processors would apply to handlers regulated by a Federal milk order. Under their recommendation, the 50-cent per hundredweight deduction would be taken from producer-settlement funds and transmitted by the market administrator to the CCC.

Respondents believe that if a State milk regulatory agency or a Federal market administrator were to collect and remit the deductions to the CCC, the administrative burden incurred by responsible persons would be reduced. The limited benefits that respondents cited, however, are not such as to warrant changing the proposed method of operating the dairy collection plan. A single collection point and process for the entire country will facilitate the administrative procedures for carrying out the plan. Also, the adopted procedure will avoid some duplication in collection efforts since a collection process must be established in any case for the many areas that are not covered by state or Federal orders.

Several respondents suggested that in addition to the late-payment charges, the regulations should also include the civil penalties that are provided for in the Act. Some respondents were concerned that, if only the late-payment charges were set forth in the regulations, some persons would not be aware that the Act authorize the Secretary to impose a civil penalty of up to $1,000 for each violation under the dairy collection plan. Other respondents stated that the regulations should specify clearly that such a civil penalty is in addition to the deductions that responsible persons are obligated to remit to the CCC and not in lieu of the deductions.

To facilitate the understanding of persons who are subject to the Act, the proposed regulations have been revised to include the pertinent provisions of the Act that relate to the imposition of a civil penalty of up to $1,000 for each violation under the dairy collection plan. In this regard, it should be noted that any responsible person who willfully fails or refuses to remit the required deductions to the CCC shall be liable not only for such a penalty that may be imposed by the Secretary but also for the full amount of the money such person should have deducted from producer payments.

A respondent recommended that the proposed "adjustment of accounts" provision be revised to specifically state when overpayments by a responsible person to the CCC would be refunded. The regulations have been changed in this regard and provide that overpayments shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amounts due in succeeding months or refunded if the subpart is not applicable in succeeding months.

One respondent suggested that the late-payment charge be assessed on a daily basis. He indicated that this would encourage responsible persons, even if late, to remit their payments to the CCC as soon as possible. This suggestion is not adopted. If the late-payment charge were computed on a daily basis, it in essence would merely represent a banking service to responsible persons who desire to use the money which is deducted from producers' milk checks and which is owed to the CCC as an alternative source of money at the going interest rate. The late-payment charge is intended as an inducement to responsible persons to remit the deductions to the CCC on a timely basis. Should such persons habitually hold the money for a full month, as respondent suggests would happen, consideration would be given by the Secretary to assessing the larger penalty of up to $1,000 authorized by the Act. These provisions should be sufficient to encourage timely compliance.

Several respondents suggested that the proposed regulations be clarified to specify that the determination of whether a payment to the CCC is late be based on the postmark date. The regulations have been revised in this respect.

Several respondents requested that certain groups of producers be exempted from the dairy collection plan. These requests are denied because the Act does not provide for any exemptions from this program on any milk marketed commercially. In any event, exceptions would undermine the purposes of the dairy collection plan.

Certain respondents sought assurance that the market administrators of Federal milk orders who might be involved in administering the dairy collection plan will be reimbursed for their expenses. Although these respondents indicated that the use of the market administrators' offices is a reasonable and efficient way to implement this program, they pointed out that the market administrators' offices are financed by assessments paid by handlers regulated under the Federal milk orders and that such assessments should not be used for implementing the collection plan. Arrangements have been made between the CCC and the Dairy Division whereby market administrators will be fully reimbursed for any costs they incur in administering this program.

One respondent requested that responsible persons be compensated for the administrative costs they incur in deducting the 50 cents per hundredweight from their producers' milk checks and remitting this money to the CCC. The request is denied since the Act does not provide for such reimbursement. It is noted, however, that the additional costs associated with making the deductions and remitting the money to the CCC should be negligible. Responsible persons, in their ordinary course of business, will know the quantity of milk on which payment is made to producers. Thus, determining the amount such persons must remit to the CCC simply involves multiplying that quantity of milk by 50 cents per hundredweight. Also, the reports that must be submitted will require only a very limited amount of information.

Several respondents asked that it be made clear that responsible persons may make deductions from partial payments to producers as well as from their final payments. The regulations

establish no restrictions in this regard. It is recognized that this flexibility may be needed in assuring the collection of the monies to be remitted to the CCC as well as accommodating producers who may wish to spread the deductions over both the partial and final payments for milk.

Certain respondents requested clarification on whether the 50-cent deduction would apply to milk that is produced on November 30, 1982, but which is not received at a plant until December 1. The regulations apply to the marketing of milk rather than to its production. Thus, all milk marketed commercially by producers during the month of December will be subject to the regulations regardless of the month in which it was produced. Accordingly, the 50-cent per hundredweight deduction would apply to milk picked up at a producer's farm in November that is received at a plant in December and paid for as milk received from such producer during December. On the other hand, the 50-cent deduction would not apply to milk picked up at a producer's farm in November that is received at a plant in December but is paid for as milk received from such producer during November. Also, with respect to a producer who markets his own milk to consumers, the 50-cent deduction would apply to all milk produced in November that such producer does not market until December.

A respondent sought clarification on whether audits of the deductions by responsible persons would be made. The Secretary and his authorized representatives have the authority to conduct audits or investigations in connection with the dairy collection plan. The collection plan will be operated in such a way as to assure compliance with the regulations.

Subsequent to the issuance of the proposed regulations on the dairy collection plan, the CCC instituted a $25.00 charge for any dishonored checks issued to the CCC. Accordingly, the proposed regulations have been revised to reflect such a charge on any dishonored check issued to the CCC under the collection plan. Further, if a check is not honored, the obligation involved will be subject to a late-payment charge since the obligation will be considered as unpaid and thus not having been paid on time.

One comment was received disputing the position taken in the proposed rule that the Regulatory Flexibility Act (Pub. L. 96-354) is not applicable to such rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to file a notice of proposed rulemaking with respect to the subject matter of the rule. The Regulatory Flexibility Act provides that an agency shall prepare a regulatory flexibility analysis if the agency is required by 5 U.S.C. 553 or any other law to publish a general notice of proposed rulemaking with respect to any proposed rule. The provisions of 5 U.S.C. 553(a) exempt from proposed rulemaking "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." The Department believes that price support operations conducted by the CCC fall within this statutory exemption. However, following Departmental policy, a notice of proposed rulemaking was nevertheless published with respect to the implementation plan.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

Accordingly, 7 CFR Part 1430 is amended by inserting immediately before § 1430.282 the subpart heading "Subpart—Price Support Program" and by adding immediately after § 1430.282 a new subpart to read as follows:

PART 1430—[AMENDED]

Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers

Sec.

1430.291 General statement.
1430.292 Definitions.
1430.293 Period of applicability.
1430.294 Responsibility for administration of regulations.
1430.295 Remittance of producer deductions to CCC.
1430.296 Responsibility for records and facilities.
1430.297 Adjustment of accounts.
1430.298 Charges and penalties.
1430.299 Continuing obligations.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended, (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

Subpart—Regulations Governing Certain Deductions on Milk Marketing of Producers

§ 1430.291 General statement.

This subpart provides for the implementation of certain provisions of the dairy price support program, which is authorized by section 201 of the Agricultural Act of 1949, as amended (referred to hereafter as the "Act"). Section 201(d)(2) of the Act specifies that during the period of October 1, 1982, through September 30, 1985, the Secretary may provide for a deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers, including producers who market milk of their own production directly to consumers. The deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the dairy price support program. The Act also specifies that the Secretary's authority for requiring such deductions shall not apply for any fiscal year for which the Secretary estimates that the net price support purchases of milk or the products of milk would be less than 5 billion pounds milk equivalent. In addition, if at any time during a fiscal year the Secretary should estimate that such net price support purchases during that fiscal year would be less than 5 billion pounds milk equivalent, the Secretary's authority for requiring such deductions shall not apply for the balance of that fiscal year.

§ 1430.292 Definitions.

For purposes of this subpart, the terms listed below shall have the following meanings:

(a) *"United States"* means the 50 states of the United States of America, the District of Columbia, Puerto Rico, and the affected territories of the United States of America.

(b) *"Department"* means the United States Department of Agriculture.

(c) *"Secretary"* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(d) *"Dairy Division"* means the Dairy Division of the Department's Agricultural Marketing Service.

(e) *"CCC"* means the Commodity Credit Corporation.

(f) *"Person"* means any individual, partnership, corporation, association, or other business or governmental unit.

(g) *"Producer"* means any person within the United States who produces milk from cows.

(h) *"Responsible person"* means:

(1) Any person who pays a producer for milk marketed commercially by the producer. This shall include a handler regulated under a Federal milk order to the extent of any payments for milk that are transmitted by the handler to the market administrator for transmittal by the market administrator to individual producers.

(2) Any producer with respect to milk of his own production that he markets commercially in the form of milk or milk products to consumers, either directly or through retail or wholesale outlets.

(i) *"Deduction"* means the money that is subtracted under the authority described in § 1430.291 from the proceeds of the sale of all milk marketed commercially by producers.

§ 1430.293 Period of applicability.

The provisions of this subpart shall apply only to the milk that is marketed commercially by producers during those months for which the Secretary has announced that the deductions described in § 1430.291 are required.

§ 1430.294 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering this subpart.

§ 1430.295 Remittance of producer deductions to CCC.

The following procedures shall apply with respect to remitting to the CCC the deductions described in § 1430.291:

(a) Each responsible person who pays a producer for milk marketed commercially during the month shall remit to the CCC by the last day of the following month, or at the time of making final payment to the producer for such milk, whichever is earlier, an amount equal to 50 cents per hundredweight times the quantity of milk for which payment to the producer is being made.

(b) Each responsible person who markets milk of his own production to consumers (either directly or through retail or wholesale outlets) in the form of milk or milk products during the month shall remit to the CCC by the last day of the following month an amount equal to 50 cents per hundredweight times the quantity of such person's own production used in such marketings.

(c) When remitting money to the CCC in accordance with paragraphs (a) and (b) of this section, each responsible person shall file a report prescribed by the Dairy Division showing:

(1) The identity of the responsible person, including such person's business address;

(2) The month in which the applicable producer marketings occurred; and

(3) The total pounds of milk to which the remittance applies.

(d) Money remitted to the CCC shall be in the form of a check made payable to "Commodity Credit Corporation."

(e) Checks and reports required under this section shall be mailed to the location designated by the Dairy Division.

§ 1430.296 Responsibility for records and facilities.

(a) *Records to be maintained.* Each responsible person shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) *Availability of records and facilities.* Each responsible person shall make available all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by the responsible person for a period of three years that shall begin at the end of the month to which such records pertain, unless the Dairy Division notifies the responsible person that such records are necessary in connection with litigation for a longer period. In such case, the records shall be retained until the litigation is terminated or a waiver is granted by the Dairy Division.

§ 1430.297 Adjustment of accounts.

Whenever the Department determines through an audit of a responsible person's reports, records, books or accounts or through some other means that additional money is due the CCC or that money is due such person from the CCC, the responsible person shall be notified of the amount due. The responsible person shall then remit any amount due the CCC by the next date for remitting deductions as provided in § 1430.295. Overpayments shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amounts due in succeeding months or refunded if this subpart is not applicable in succeeding months.

§ 1430.298 Charges and penalties.

(a) *Charge for dishonored checks.* Each responsible person who issues a check to the CCC that is not honored because of insufficient funds shall be asssessed a charge of $25.00.

(b) *Late-payment charge.* Any unpaid obligation of a responsible person that is due the CCC in accordance with § 1430.295 shall be increased by a late-payment charge which shall be applied on the first day after the date such obligation was due and on the same day of each succeeding month until such obligation is paid. The total obligation due from such person shall included any unpaid charges computed previously under this paragraph. The charge shall be an amount equal to one-twelfth (rounded to the nearest one-hundredth of one percent) of the annual rate of interest announced by the CCC under 7 CFR 1403.5. The timeliness of a payment to the CCC shall be based on the applicable postmark date.

(c) *Penalties.* Any responsible person who willfully violates any provision of this subpart, including the willful failure or refusal to remit any amounts due the CCC, shall be liable, in addition to payment of the full amount due plus the applicable late-payment charge, for a penalty to be assessed by the Secretary of not more than $1,000 for each such violation and also remedies otherwise provided by law or in equity.

§ 1430.299 Continuing obligations.

Obligations of a responsible person that arise under this subpart shall continue in effect until the final disposition of such obligations even though the deductions described in § 1430.291 may no longer be required.

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

Frank W. Naylor, Jr.

Acting Secretary.

[FR Doc. 82-32639 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule in part updates this section to reflect the opening and closing of Immigration and Naturalization Service offices abroad under the direction of an officer in charge. In addition this section is amended as a result of the elimination of the conditional entrant classification in 203(a)(7) of the Immigration and Nationality Act by Pub. L. 96–212, the Refugee Act of 1980. Technical corrections have been made to this section to improve readability.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, telephone: (202) 633–3048. For specific information: Burwell O. Buchanan, Immigration Inspector, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, telephone: (202) 633–2361.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service

office in Tijuana, Mexico and Tokyo, Japan were closed in 1978–1979. Recently, Service offices have been established in Montevideo, Uruguay, Singapore, the Republic of Singapore, and Bangkok, Thailand. This rule updates this section to reflect those changes.

In addition, on March 17, 1980, Pub. L. 96–212, was enacted into law becoming effective April 1, 1980. The enactment of this legislation eliminated section 203(a)(7) of the Act, which established the conditional entrant classification. This rule amends the references to "conditional entrants" in this section to read "refugees" under section 207 of the Act.

Finally, technical corrections have been made to 8 CFR 103.1(o) to improve readability, and to 214.2(j)(3) pursuant to Executive Order 12388, dated October 14, 1982, which changed the name of International Communication Agency back to the "United States Information Agency".

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the changes are mandated by law and delay would be contrary to the public interest.

In accordance with 5 U.S.C. 605(d) the Commissioner of Immigration and Naturalization certifies that this rule will not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 103

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

8 CFR Part 214

Aliens.

Accordingly, Title 8 Code of Federal Regulations is amended as follows:

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

Section 103.1(o) is revised to read as follows:

§ 103.1 Delegation of authority.

* * * * *

(o) *Officers in Charge.*

(1) *General.* Officers in charge have program and administrative supervisory responsibility for all personnel assigned to their office. Officers in charge have responsibility for the supervision of inspection at ports of entry and the authorization of extensions of nonimmigrant admission periods and of voluntary departure prior to the commencement of deportation hearings. Officers in charge in Districts 33, 35, and 37 have the same powers with respect to petitions and applications submitted by citizens or aliens residing in their respective areas as are conferred on district directors in the United States. The officers in charge in the places enumerated in § 212.1(i) of this chapter have the authority to act on requests for waiver of visa and passport requirements under the provisions of section 212(d)(4)(A) of the Act.

(2) The officers in charge of the offices located in Frankfurt, Germany; Athens, Greece; Rome, Italy; Naples, Italy; Palermo, Italy; Vienna, Austria; Manila, Philippines; Seoul, Korea; Singapore, Republic of Singapore; Bangkok, Thailand; Hong Kong, B.C.C.; Mexico City, Mexico; Guadalajara, Mexico; Monterrey, Mexico; and Montevideo, Uruguay, are authorized to perform the following functions: Authorize waivers of grounds of excludability under sections 212 (h) and (i) of the Act; adjudicate applications for permission to reapply for admission to the United States after deportation or removal if filed by an applicant for an immigrant visa in conjunction with an application for waiver of grounds of excludability under section 212 (h) or (i) of the Act, or if filed by an applicant for a nonimmigrant visa under section 101(a)(15) (K) of the Act; approve visa petitions of any immediate relative or preference status except third and sixth preference; in cases in which the Department of State had delegated recommending power to the consular officer, approve recommendations made by consular officers for waiver of grounds of excludability in behalf of nonimmigrant visa applicants under section 212(d)(3) of the Act and concur in proposed waivers by consular officers of the requirement of visa or passport by a nonimmigrant on the basis of unforeseen emergency; exercise discretion to grant applications for the benefits of sections 211 and 212(c) of the Act; process Form I 90 applications and deliver duplicate Forms I 551; extend reentry permits; and process Form N 565 applications and deliver certificates issued thereunder; and may consider applications of aliens seeking classification as refugees under section 207 of the Act.

(3)The officers in charge of the offices located in the following places are authorized to perform the function of preinspection of passengers and crews on aircraft and surface vessels departing directly to the U.S. mainland: Hamilton, Bermuda; Freeport, Bahamas; Nassau, Bahamas and Calgary, Alberta, Canada.

(4) The officer in charge of the office in Montreal, Canada is authorized to perform preinspection of passengers and crew of aircraft departing directly to the United States mainland and authorize waivers of grounds of excludability under sections 212 (h) and (i); also, approve applications for permission to reapply for admission to the United States after deportation or removal, when filed in conjunction with an application for waiver of grounds of excludability under sections 212 (h) or (i) of the Act.

* * * * *

PART 214—NONIMMIGRANT CLASSES

Section 214.2(j)(3) is revised to read:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(j) * * *

(3) *Aliens in cancelled programs.* When the approval of an exchange visitor program is withdrawn by the United States Information Agency, the district director shall send a notice of the withdrawal to each participant in the program. A copy of each such notice shall also be sent to the program sponsor. If the exchange visitor is currently engaged in activities authorized by the cancelled program, the participant is authorized to remain in the United States to engage in those activities until expiration of the period of stay previously authorized. The district director shall also notify participants in cancelled programs that permission to remain in the United States as an exchange visitor, or extension of stay may be obtained if the participant is accepted in another approved program and a Form IAP–66, executed by the new program sponsor, is submitted. In this case, a release from the sponsor of the cancelled program will not be required.

* * * * *

(Sec. 103 of the Immigration and Nationality Act; (8 U.S.C. 1103))

Dated: November 24, 1982.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 82-32709 Filed 11-29-82; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Addition of Mall Airways, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Mall Airways, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization Service entered into an agreement with Mall Airways, Inc. on October 28, 1982 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, 8 CFR Part 238 is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit,* the listing of transportation lines in paragraph (b) *Signatory lines,* is amended by adding in alphabetical sequence, "Mall Airways, Inc."

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: November 24, 1982.

Andrew J. Carmichael, Jr.,

Associate Commissioner Examinations, Immigration and Naturalization Service.

[FR Doc. 82-32670 Filed 11-29-82; 8:45 am]

BILLING CODE 4410-10-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: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending its regulations to delegate authority to its Board of Review, the Director of the 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 enforcement matters. The delegation necessitates certain corrective amendments to Part 308, FDIC's Rules of Practice and Procedures, to correctly reflect the delegation. Authority is also being delegated to the Executive Secretary to act on certain procedural motions. Certain minor corrective amendments to Part 308 are being made at the same time.

EFFECTIVE DATE: The amendments will become effective on November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur L. Beamon, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550–17th Street, N.W., 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 of FDIC 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 for the handling of enforcement proceedings.

The amendments do not affect the right of any party to challenge charges brought in an administrative hearing. The amendments are rules of FDIC internal procedure and practice. They 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 were not required by the Administrative Procedure Act (5 U.S.C. 553), because of the importance of the functions being delegated FDIC felt the public should have the opportunity to comment. For that reason, FDIC published 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 (1979)).

The amendments were published for comment in the June 29, 1982 issue of the **Federal Register** (47 FR 28108 (1982)). No comments were received on the proposal from members of the public and only three internal FDIC comments were received. These for the most part dealt with organization and structure of the proposal, with suggested revisions for clarity, some of which have been incorporated into the final amendment. Besides adding greater clarity, changes in the final from the proposal involve: (1) Changes to the headings to make clear that the amendments apply to all enforcement proceedings, including civil money penalty proceedings, and (2) to ensure that the content of all headings is also incorporated into the body of the regulation.

The requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are not applicable because the amendments do not impose recordkeeping or reporting requirements on any member of the public. Because the amendments are procedural in nature and will improve the efficiency of FDIC's internal operations without affecting any person or entity outside of the FDIC, the Board of Directors of the FDIC has determined, in accordance with the Administrative Procedure Act (5 U.S.C. 553), that good cause exists for making the amendments effective immediately upon publication in the **Federal Register.** For the same reasons, the Board of Directors has concluded that a cost benefit analysis, including a small bank impact statement, is not necessary. Similarly, a final regulatory flexibility analysis has not been prepared, in view of the Board of Director's certification when the amendments were originally proposed that the amendments would not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Banks, banking, Insurance, Authority delegations.

12 CFR Part 308

Administrative practice and procedure, 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 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, REQUESTS, 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) *Initiation, processing and disposition of administration enforcement proceedings.* The Board of Directors has delegated authority for the initiation, processing and disposition of enforcement actions, as follows:

(1) *Issuance of notices of charges and of hearing.* The authority to issue notices of charges and of hearing pursuant to section 8(b) of the Federal Deposit Insurance Act (the "Act") (12 U.S.C. 1818(b)) is delegated to the Board of Review.

(2) *Issuance of orders to cease and desist pursuant to written stipulation.* The authority under section 8(b) of the Act to issue orders to cease and desist (hereafter "section 8(b) orders") pursuant to written stipulation, is delegated as follows:

(i) *Stipulated without change.* Where a proposed order to cease and desist which has previously been approved by the Board of Review (hereafter "proposed order"), is consented to without change, and an administrative law judge has not been appointed, authority to issue a section 8(b) order in the form consented to, 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.* Where changes to a proposed order fall within the guidelines set forth in this paragraph (o)(2)(ii), and an administrative law judge has not been appointed, authority to issue the section 8(b) 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. Permissible changes from requirements set forth in proposed orders 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 a bank's board of directors.

(iii) *Stipulated changes that exceed permissible guidelines.* Where negotiated changes to a proposed order exceed the limitations enumerated in paragraph (o)(2)(ii) of § 303.13, authority to issue the order is delegated to the Board of Review.

(iv) *Issuance of section 8(b) orders resulting from section 8(c) proceedings.* The authority to issue section 8(b) orders in proceedings in which temporary orders to cease and desist pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)) (hereafter "section 8(c) orders") have been issued, is delegated as follows:

(A) *Stipulated without change from original section 8(c) order.* Where the terms and conditions of a section 8(c) order are incorporated into a section 8(b) order without change pursuant to written stipulation, and an administrative law judge has not been appointed, authority to issue the section 8(b) 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.

(B) *Stipulated with changes from original section 8(c) order.* Where changes are proposed to be made to the terms and conditions of a section 8(c) order by written stipulation, authority to issue the section 8(b) order is delegated to the Board of Review.

(3) *Termination and modification of section 8(b) orders.* The authority to terminate or modify an outstanding section 8(b) order is delegated as follows:

(i) *Full compliance with all provisions of the order.* Where all provisions of a section 8(b) order have been complied with, 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 permissible guidelines.* In instances where there has been less than full compliance with all terms and conditions of a section 8(b) order, but compliance falls within the guidelines set forth in this paragraph (o)(3)(ii), authority to terminate section 8(b) orders 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. At

minimum, the following requirements must be met:

(A) At least 75% of each dollar and/or percentage requirement has been met;

(B) There is substantial compliance with the nondollar 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.* In all other instances, authority to terminate outstanding section 8(b) orders is delegated to the Board of Review.

(iv) *Modification of section 8(b) orders.* The authority to modify outstanding section 8(b) orders issued pursuant to written stipulation, is delegated to the Board of Review, except any section 8(b) order that is issued by the Board of Directors pursuant to written stipulation subsequent to the effective date of this § 303.13(o). The authority to modify outstanding section 8(b) orders issued after an administrative hearing is retained by the Board of Directors.

(4) *Civil money penalty proceeding.* The authority to issue any notice of assessment of civil money penalty which is not expressly delegated in other parts of this subchapter is delegated to the Board of Review.

(5) *Issuance of orders and decisions in proceedings where an administrative law judge has been appointed.* Where an administrative law judge has been appointed, authority to issue orders pursuant to written stipulation is delegated to the Board of Review. Authority to issue orders and decisions in proceedings in which a recommended decision has been rendered by an administrative law judge is retained by the Board of Directors.

(6) *Other section 8 actions.* Except as noted in paragraph (o)(2)(iv) of this § 303.13, this delegation does not affect actions pursuant to sections 8(a), 8(c), 8(e), and 8(g) of the Act (12 U.S.C. 1818(a), (c), and (e), (g)).

(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 § 303.13(o). Any aggrieved party or person may petition the Board of Directors for review of any action taken under authority of this § 303.13(o).

(8) *Referral of cases to the Board of Directors by members of the Board of Review.* Any member of the Board of Review may refer any case which is before the Board of Review pursuant to authority delegated under this § 303.13(o) 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 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. 3041 (12 U.S.C. 1972); sec. 203, Pub. L. No. 96–481, 94 Stat. 2325 Stat. 2325 (5 U.S.C. 504).

2. Section 308.01 is amended by removing the semicolon 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 adding a sentence at the end of paragraph (b)(11) and revising paragraphs (e) and (j) 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 § 308.07.

* * * * *

(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; change 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 § 303.13, paragraph (b) is amended by removing 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 removing the words "by the Board of Directors in its discretion".

§ 308.42 [Amended]

6. Section 308.42 is amended by removing 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 removing 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 unless 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 removing 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 on November 22, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82-32659 Filed 11-29-82; 8:45 am]

BILLING CODE 6714-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 253

[Economic Regs. Issuance of Part 253, Dockets 40772, 38021, 38348]

Terms of Contract of Carriage

AGENCY: Civil Aeronautics Board.

ACTION: Rule related notice.

SUMMARY: The CAB sets requirements for airlines operating in domestic transportation to notify passengers of any incorporation by reference of terms in the contract of carriage. The rules preempt the States from regulating the subject of the notice of contract terms to be given on passengers' tickets. They require carriers to ensure that information on specified terms is available wherever their tickets are sold. The rules clarify the law applicable to notice of airline passenger contract terms after the expiration of domestic tariffs on January 1, 1983. (ER-1302, 47 FR 52128, November 19, 1982.) Petitions have been filed to modify the rule before its January 1 effective date. This document shortens the required 30 day period to file answers to petitions filed by the ATA, IATA, and ACAP to allow the Board opportunity to consider the petitions at its scheduled December meeting.

DATES: Adopted: November 24, 1982. Answers due no later than 4 p.m., December 3, 1982.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules & Legislation, or 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:

Order Shortening Answer Period

On November 23, 1982, the Air Transport Association (ATA), and the International Air Transport Association (IATA), petitioned the Board to modify the new Part 253, Notice of terms of contract of carriage, which was adopted by the Board at its September 27, 1982, meeting.

ACAP filed a petition on November 10, 1982, also requesting the Board to modify Part 253 prior to its effective date. It asked the Board to add a requirement that carriers make available free written summaries of the important conditions of contract that are incorporated by reference. It argued that such summaries are necessary, and perhaps the only practical way, to inform passengers of those terms. In addition, it argued that the summaries would encourage competition among airlines.

Section 302.38(a) provides a 30-day period for interested persons to file an answer to a petition for rulemaking. This order shortens the answer period.

The new part 253 must be effective on January 1, 1983, in order to ensure a smooth transition when the Board's domestic tariff authority ends on that date. The Board finds it in the public interest to consider the petition, and any answers filed to it, at its scheduled Sunshine meeting, in December in order to avoid any confusion or delay in the implementation of this rule.

Accordingly, the Civil Aeronautics Board shortens the period for filing answers to the ATA/IATA and the ACAP petitions. Answers shall be filed no later than 4 p.m., December 3, 1982.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-32810 Filed 11-29-82; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 254

[Docket 40366, 38621, Order 82-11-124]

Domestic Baggage Liability

AGENCY: Civil Aeronautics Board.

ACTION: Rule related notice.

SUMMARY: The CAB simplified and codified its rules containing baggage liability requirements for airlines (ER-1305, 47 FR 52987, November 24, 1982). Airlines in interstate and overseas air transportation may not limit their liability to less than $100 per passenger for loss, damage, or delay in the carriage of passenger baggage. This action was taken at the CAB's initiative as part of its review of consumer protection rules prior to sunset. The effective date was set at 90 days from publication. Petitions were filed regarding a 180 day effective date. This document shortens the required 30-day period to answer petitions to 14 days. This action is necessary so the Board may consider the petition at its next meeting.

DATES: Adopted: November 24, 1982. Answers due no later than 4 p.m., December 3, 1982.

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

SUPPLEMENTARY INFORMATION:

Order Shortening Answer Period

On November 19, 1982, Certain Members of the Air Transport Association of America (ATA) petitioned the Board to allow a minimum of 180 days before the new domestic baggage liability rule becomes effective.

14 CFR 302.38(a) provides a 30-day period for interested persons to file answers to petitions for rulemaking. This order shortens the answer period to 14 days. The Board wishes to consider the petition at its scheduled Sunshine meeting in December in order to prevent any unnecessary confusion or delay in the implementation of the rule.

Accordingly, the Civil Aeronautics Board shortens the period to file answers to this petition to 14 days. Answers shall be filed at the Board no later than 4 p.m., December 3, 1982.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-32811 Filed 11-29-82; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 385

[Organization Reg. Amdt. No. 129 to Part 385; Reg. OR-202]

Delegations and Review of Action Under Delegation; Nonhearing Matters; Merger of the Data Requirements Division and the Data Systems Management Division, Office of the Comptroller

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends the CAB's delegations of authority to reflect the reorganization of the Board's information management resources by merging the Data Requirements Division and the Data Systems Management Division to form a new Information Management Division.

DATES: Adopted: November 23, 1982. Effective: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Robin A. Caldwell, Chief, Information Management Division, Office of Comptroller, Civil Aeronautics Board,

1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5922.

SUPPLEMENTARY INFORMATION: By Staff Notice SN–82–22 dated May 19, 1982, the Board's Comptroller reorganized the information management resources in his office by merging two divisions, the Data Requirements Division and the Data Systems Management Division, to form a new Information Management Division. This merger was made to ensure the continuing review and refinement of CAB financial and statistical air carrier data collection functions. This rule transfers the authority delegated to the Chiefs of the two former divisions to the newly established position of Chief, Information Management Division.

In merging the current delegations of authority, there has been no deletion or addition to the delegations.

Since this amendment is administrative in nature, affecting rules of agency organization and procedure, we find that notice and public procedure are unnecessary 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 delegations.

PART 385—[AMENDED]

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.

2. The Table of Contents, Subpart B, is amended by retitling § 385.28 and removing and reserving § 385.29, to read:

Subpart B—Delegation of Functions to Staff Members

Sec.

* * * * *

385.28 Delegation to the Chief, Information Management Division, Office of the Comptroller.

385.29 [Reserved]

3. Section 385.28 is retitled and revised to read:

§ 385.28 Delegation to the Chief, Information Management Division, Office of the Comptroller.

The Board delegates to the Chief, Information Management Division, Office of the Comptroller, the authority to:

(a) Grant or deny requests by air carriers for substitution of their own forms or adaptation of Board forms to meet special needs where Board approval of such form is required by the Economic Regulations.

(b) Grant or deny requests for confidential treatment of preliminary year-end financial reports.

(c) Grant or deny requests for use of international service segment data in accordance with the limitations on the availability of these data contained in section 19–6 of Part 241 of this chapter.

(d) Grant or deny requests for use of international origin and destination statistics in accordance with Board policy as set forth in § 399.100 of this chapter.

(e) Prescribe, in specific instances, different passenger weight standards to approximate variations in actual experience, for reporting passenger ton-miles and available ton-miles.

(f) Establish record-retention practices required to achieve conformance with regulations promulgated by the Board.

(g) Interpret the Board's record-retention requirements.

(h) Waive any of the record-retention requirements as warranted, consistent with the provisions of Part 249 of this chapter.

§ 385.29 [Removed and Reserved]

4. Section 385.29 is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–32862 Filed 11–29–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–128 (Colorado-1 Amdt.); Order No. 270]

High-Cost Gas Produced From Tight Formations; Final Rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the amended recommendation of the Colorado Oil and Gas Conservation Commission concerning the Wattenberg J Sand Formation.

EFFECTIVE DATE: This rule is effective November 22, 1982.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511 or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued November 22, 1982.

The Commission hereby amends § 271.703(d) of its regulations to add certain areas to the Wattenberg J Sand Formation, a designated tight formation, and to delete from the Wattenberg J Sand Formation certain areas that were originally included in the designation. The Wattenberg J Sand Formation was originally designated as a tight formation, and the gas produced therefrom became eligible for incentive pricing under § 271.703, in Order No. 124, Docket No. RM79–76 (Colorado-1), issued January 23, 1981 (46 FR 9921, January 30, 1981). In that proceeding, the Commission acted on a recommendation filed by the Colorado Oil and Gas Conservation Commission (Colorado) on July 9, 1980. Since certain areas within the recommended formation had been authorized to be developed by infill drilling by Colorado Order No. 232–20, issued August 21, 1979, the Commission reviewed the recommendation under §§ 271.703(b) and 271.703(c)(2)(i)(D). Section 271.703 (b)(6) contains the definition of infill drilling, and § 271.703 (c)(2)(i)(D) provides that if a formation or any portion thereof was authorized to be developed by infill drilling prior to the date the jurisdictional agency made its tight formation recommendation, then that formation or portion thereof should not be recommended, if the jurisdictional agency has information to indicate that such formation or portion thereof can be developed absent the tight formation incentive price. The Commission determined that Colorado had information which indicated that certain areas in the Wattenberg J Sand Formation as recommended by Colorado could be developed absent the incentive price, and absent evidence to the contrary, these areas should be

excluded from the tight formation designation. The excluded area consisted of only those 320-acre drilling units which were developed prior to the issuance of Colorado Order No. 232–20.

On July 19, 1982, Colorado submitted a request that the final rule issued in Order No. 124 be corrected by amending the acreage designated as the Wattenberg J Sand Formation. Colorado submitted data to verify that ten 320-acre drilling units had been incorrectly included in the excluded area, determined to be developed prior to the date of Order No. 232–20, and asked that these areas now be included in the tight formation. Additionally, Colorado noted that two 320-acre drilling units which had been developed prior to the issuance of Order No. 232-20 were erroneously included in the area designated as a tight formation in Order No. 124, and asked that they now be excluded.

The amendment requested by Colorado was contained in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued August 17, 1982 (47 FR 36434, August 20, 1982). One comment was received in response to the Notice of Proposed Rulemaking, which supported the amendment to the designation as recommended by Colorado.

The Notice specifically requested comments concerning whether any drilling activity was undertaken in reliance on Order No. 124, in the areas now recommended to be deleted. No comments on this issue were received, but the Commission staff has verified through Colorado that there has been no new drilling activity in the area to be deleted since the issuance of Order No. 124.

The Commission finds that the evidence submitted by Colorado supports its assertion that the Wattenberg J Sand Formation underlying the ten 320-acre units previously excluded from the tight formation designation in Order No. 124 satisfies the guidelines found in § 271.703(c) and should be added to the designation of the Wattenberg J Sand Formation as made in that order. Additionally, the Commission finds that the two areas which were included in the designation, in which Colorado now states development had occurred prior to the issuance of the infill drilling order, should be excluded from the Wattenberg J Sand tight formation designation. The Commission adopts the Colorado recommendation.

This amendment shall become effective November 22, 1982. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and, therefore, incentive prices should be made available as soon as possible. The need to make incentive prices immediately available establishes good cause to waive the thirty-day publication period.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective November 22, 1982.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES

§ 271.703 [Amended]

Section 271.703(d)(11) is amended in the appendix to Order No. 124, Docket No. RM79–76 (Colorado-1), by removing the following from the area excluded from the tight formation designation:

Weld County

Township 1 North, Range 66 West, 6th P.M., Section 20: W½
Township 2 North, Range 65 West, 6th P.M., Section 04: E½
Township 2 North, Range 67 West, 6th P.M., Section 16: W½ Section 20: N½
Township 2 North, Range 68 West, 6th P.M., Section 16: E½ Section 22: W½
Township 3 North, Range 65 West, 6th P.M., Section 12: E½ Section 32: W½
Township 3 North, Range 66 West, 6th P.M., Section 16: all.

By adding the following to the area excluded from the tight formation designation:

Weld County

Township 2 North, Range 68 West, 6th P.M., Section 16: W½
Township 3 North, Range 65 West, 6th P.M., Section 32: E½

[FR Doc. 82-32627 Filed 11-29-82; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM79–14]

Natural Gas Policy Act of 1978; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: December 1, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426; (202) 357–8500.

SUPPLEMENTARY INFORMATION:

In the matter of publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978, Docket No. RM 79–14.

Issued: November 23, 1982.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December 1982 is issued by the publication of a price table for the applicable month.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

Calendar Year 1980

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental Pricing Threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA Section 102 Threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA Section 109 Threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.934
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.840	7.380	7.400	7.400	7.450	7.580

Calendar Year 1981

Incremental Pricing Threshold	$1.891	$1.908	$1.925	$1.942	$1.954	$1.967	$1.980	$1.990	$2.000	$2.010	$2.025	$2.041
NGPA Section 102 Threshold	2.667	2.698	2.729	2.761	2.787	2.813	2.840	2.863	2.886	2.909	2.940	2.971
NGPA Section 109 Threshold	1.957	1.975	1.993	2.011	2.024	2.037	2.050	2.060	2.070	2.080	2.096	2.112
130% of No. 2 Fuel Oil in New York City Threshold	7.610	7.760	8.260	9.010	9.510	9.430	9.360	9.260	8.860	8.700	8.930	8.990

Calendar Year 1982

Incremental Pricing Threshold	$2.057	$2.071	$2.085	$2.099	$2.106	$2.113	$2.120	$2.129	$2.139	$2.149	$2.159	$2.169
NGPA Section 102 Threshold	3.003	3.033	3.063	3.093	3.112	3.132	3.152	3.176	3.200	3.224	3.249	3.274
NGPA Section 109 Threshold	2.128	2.143	2.158	2.173	2.180	2.187	2.194	2.204	2.214	2.224	2.234	2.244
130% of No. 2 Fuel Oil in New York City Threshold	9.180	9.340	9.470	9.340	9.280	8.000	8.170	8.670	8.660	8.950	8.640	8.890

[FR Doc. 82-32626 Filed 11-29-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0341]

D&C Red No. 21 and D&C Red No. 22

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing D&C Red No. 21 and D&C Red No. 22 for general use in drugs and cosmetics excluding use in the area of the eye. This action is in response to a petition filed by the Cosmetic, Toiletry and Fragrance Association, Inc. This rule will remove D&C Red No. 21 and D&C Red No. 22 from the provisional list of color additives for general use in drugs and cosmetics. To provide an opportunity for objections, published elsewhere in this issue of the **Federal Register** is an order extending the closing date for the provisional listing of D&C Red No. 21 and D&C Red No. 22 until March 1, 1983.

DATES: Effective January 3, 1983; objections by December 30, 1982.

ADDRESS: Written objections may be sent 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 L. Herrman, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1973 (38 FR 21199), FDA announced that a petition (CAP 6C0043) for the permanent listing of D&C Red No. 21 and D&C Red No. 22 as color additives for general use in drugs and cosmetics had been filed by the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

Toxicological Testing of D&C Red No. 21 and D&C Red No. 22

The provisional regulations published in the **Federal Register** of February 4, 1977 (42 FR 6992), required new chronic toxicity studies for D&C Red No. 21 and D&C Red No. 22 as a condition of their continued provisional listing for ingested uses. FDA placed these requirements on 31 color additives because the toxicity studies that the peititioners had submitted to support the safe use of these color additives were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41863):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficient number of animals was reviewed histologically.

4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

FDA postponed the closing date for the provisional listing of the color additives until January 31, 1981, for the completion of the required chronic toxicity studies. FDA later extended the closing date for completing these studies and submitting data. In a proposal in the **Federal Register** of November 14, 1980 (45 FR 75226), the agency outlined the reasons for postponing the closing dates for 23 provisonally listed color additives under test, including D&C Red No. 21 and D&C Red No. 22, beyond January 31, 1981.

In the **Federal Register** of March 27, 1981 (46 FR 18958), the agency established a new closing date of November 30, 1982 for the complete evaluation of D&C Red No. 21 and D&C Red No. 22. When the order set forth below becomes effective it will remove D&C Red No. 21 and D&C Red No. 22 from the provisional list. Published elsewhere in this issue of the **Federal Register** is an order that extends the closing date for the provisional listing of D&C Red Nos. 21 and 22 until March 1, 1983, to provide an opportunity for filing objections to this order.

Evaluation of the Safety of D&C Red No. 21 and D&C Red No. 22 for Drug and Cosmetic Use

The agency has completed its evaluation of the color additive petition for D&C Red No. 21 and D&C Red No. 22, including two new chronic toxicity studies in rats and mice.

The test material in all of the toxicity studies was D&C Red No. 21. Because D&C Red No. 22 is the disodium salt of D&C Red No. 21, the agency considers the two color additives to be toxicologically equivalent. Thus any safety conclusion drawn from studies of D&C Red No. 21 applies equally to D&C Red No. 22.

The agency previously reviewed reports on a number of other animal toxicity studies on D&C Red No. 21. These included acute oral toxicity studies in rats and dogs, an 18-week feeding study in rates, 2-year feeding studies in rats and dogs, a dermal study with rabbits, an 18-month skin painting study with mice, a metabolism and excretion study in rats, a 3-generation reproduction study in rats, and teratology studies in rats and rabbits. These studies did not produce any evidence that the use of this color additive, for the petitioned uses, would be unsafe. The agency concluded, however, that new chronic toxicity feeding studies would be required to provide data to permit a final determination to be made on the listing of D&C Red Nos. 21 and 22 (41 FR 41860; September 23, 1976).

The new long-term chronic studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of two species tested significantly increases the power of these tests to detect dose-related effects. The studies were designed and conducted in full compliance with the FDA's good laboratory practice regulations and were subject to inspections by FDA officials during their course.

In the new chronic feeding study with male and female CD–1 mice, animals were fed diets containing D&C Red No. 21 at concentrations of 0.125, 0.50, and 1.0 percent of their diets. The petitioner reported that the incidence of hepatocellular carcinoma among male mice in the treated groups was higher than that in the study controls, but that this finding was not toxicologically significant because the incidence among control animals was unusually low, and because the incidence in treated animals was well within the expected incidence for this species and strain. To clarify this issue, however, by letter dated May 28, 1982, FDA requested, among other things, that microslides be prepared from tissue sections taken from the livers of all male mice in the mid- and low-dosage groups, and that these microslides, together with all microslides of the livers of male mice previously sectioned, be submitted by the petitioner for pathology review. FDA also requested historical control data on the incidence of hepatocellular neoplasms at the testing laboratory.

On July 2, 1982, and July 26, 1982, CTFA submitted to FDA the requested information. The petitioner included in these submissions (1) microslides from tissue sections of the livers of all male mice from the two control groups and the three groups fed diets containing D&C Red No. 21 and (2) historical data on the incidence of hepatocellular carcinomas and hepatocellular adenomas in CD–1 mice serving as controls at the testing laboratory.

FDA pathologists initially examined all the slides without knowing the identity of the experimental group to which the slide being examined belonged. The FDA diagnoses were made by a consensus of three pathologists within the Bureau of Foods. The FDA diagnoses showed two fewer animals with hepatocellular carcinomas in the control groups, three fewer animals with hepatocellular carcinomas in the mid-dose group, and four fewer animals with hepatocellular carcinomas in the high-dose group than reported by the testing laboratory. The FDA diagnoses of all the slides showed the incidence of hepatocellular carcinoma to be 1/118 (0.8 percent) in the control groups, 6/59 (10.2 percent) in the low-dose group, 4/60 (6.7 percent) in the mid-dose group, and 6/60 (10 percent) in the high-dose group. The incidence of hepatocellular carcinoma in the control groups is substantially below the historical incidence of hepatocellular carcinoma in control groups at the testing laboratory, which averaged 8.6 percent and which ranged from 4.0 to 18.3 percent in the same strain of mouse in five studies performed within approximately three years of the D&C Red No. 21 study. The incidences in all three treated groups are well within the range of this historical control incidence.[1] This fact, coupled with the lack of a dose-response relationship among the treated groups, leads FDA to conclude that there is no relationship between the occurrence of hepatocellular carcinoma in male mice and treatment with D&C Red No. 21.

More importantly, for a number of reasons, including the difficulty of distinguishing tumor types, FDA believes that in analyzing the data, hepatocellular carcinomas and adenomas should be combined for statistical analysis. Considering both types of tumors together, the FDA diagnoses showed one more animal with hepatocellular neoplasm in the control groups, four fewer animals with hepatocellular neoplasms in the mid-dose group, and two fewer animals with hepatocellular neoplasms in the high-dose group than reported by the contracting laboratory. The FDA diagnoses of all the slides showed the combined incidence of hepatocellular adenomas and carcinomas to be 14/118 (11.9 percent) in the control groups, 10/59 (16.9 percent) in the low-dose group, 9/60 (15.0 percent) in the mid-dose group, and 14/60 (23.3 percent) in the high-dose group. The time-adjusted prevalence analyses for the comparison of the high-dose group to the combined control group and for the trend for these incidences gave p-values of 0.063 and 0.074 to 0.086 (depending upon continuity correction), respectively. The agency considers that these values do not support a treatment-related effect. Furthermore, the combined incidences of hepatocellular carcinomas and adenomas in each of the treatment groups are well within the range of the historical control incidence of the testing laboratory for the same strain of mouse in five studies performed within approximately three years of the D&C Red No. 21 study. The agency also noted no relationship between occurrence of pre-neoplastic liver lesions and treatment with D&C Red No. 21. These considerations and the agency's review of all other data in the petition, including the fact that there was no treatment-related increase in incidence of any type of neoplasm in female mice, have led FDA to conclude that there is no indication of an association between the occurrence of neoplasms and the

[1] The use of appropriate historical data as an aid in evaluating data on a given chemical is a well-established practice. See, e.g., "Long-term and Short-term Screening Assays for Carcinogens: A Critical Appraisal," IARC Monographs, Supplement 2, World Health Organization, 1980, pp. 72 and 73 and Gart, J. J., Chu, K. C., and Tarone, R. E., *Journal of the National Cancer Institute*, 62:957–974, 1979.

administration of D&C Red No. 21 to mice.

In the new chronic feeding study with male and female Charles River CD rats, parental animals were fed diets containing D&C Red No. 21, at concentrations of 0.25, 1.0, or 2.0 percent, continuously from before mating until weaning of their offspring. The offspring were fed diets containing these same concentrations of D&C Red No. 21 for more than 30 months. The agency found no increases in incidence of tumors in any of the treated groups that could be attributed to exposure to this color additive.

Although there was no increase in the incidence of tumors in the new rat chronic feeding study, the agency noted that a variety of non-specific, non-neoplastic microscopic changes occurred in high dose-treated rats at incidences that were greater than in the combined control groups. The differences between control and high-dose groups were less than 10 percent. The incidence of some of these changes in the high-dose group was significantly increased when compared with their incidence in the control groups (Fisher's exact test, $p=0.0065$ to 0.0203). The agency therefore regards the high dose (2.0 percent) as an effect level. Because the increase in incidence in the high-dose group was so small, the agency concludes that these changes would not be observed at lower doses. Therefore, the agency has chosen the intermediate dose of 1.0 percent in the diet, corresponding to 500 milligrams per kilogram per day, as the no-adverse effect level. In the absence of more serious toxic effects in other tests, this rat study was used as the basis for calculating the acceptable daily intake (ADI). The ADI for humans was calculated by applying a 100-fold safety factor to the no-adverse effect level (see 21 CFR 70.40). This calculation yields a value of 5 milligrams per kilogram per day or 300 milligrams per day for a 60 kilogram person. Based on its review of available data on the current uses of D&C Red Nos. 21 and 22, FDA estimates that the upper limit lifetime-averaged internal exposure to these color additives from drugs and cosmetics is 6.3 milligrams per day (drugs, 5 milligrams and cosmetics, 1.3 milligrams). Thus, the acceptable daily intake of D&C Red Nos. 21 and 22 is approximately 47 times the estimated daily intake of the color additives.

Based upon its evaluation of the results of the two recently submitted chronic toxicity studies, the agency has determined that D&C Red No. 21 and D&C Red No. 22 are not carcinogenic to Charles River Sprague-Dawley CD rats or CD–1 mice after dietary exposure as high as 2.0 percent and 1.0 percent, respectively, under conditions of testing adequate to provide assurance for their safe use. The agency has also completed its evaluation of other animal studies submitted by the petitioner for the purpose of establishing the safety of D&C Red Nos. 21 and 22 for use in externally applied drugs and externally applied cosmetics. The data from these studies demonstrate that, with respect to dermal safety, D&C Red No. 21 is nonirritating when applied daily to either intact or abraded skin. Furthermore, D&C Red No. 21 was not found to be carcinogenic when applied twice weekly to the skin of mice over their lifetimes. Therefore, FDA finds that it can conclude to a reasonable certainty that no harm will result from the petitioned uses of D&C Red No. 21 and D&C Red No. 22.

Conclusion

The agency concludes that D&C Red No. 21 and D&C Red No. 22 are safe for general use in drugs and cosmetics excluding use in the area of the eye (see § 70.5 *General restrictions on color additives* (21 CFR 70.5)), and that certification is necessary for the protection of the public health. The final toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies are on file at the Dockets Management Branch (address above) and may be reviewed there between 9 a.m. and 4 p.m., Monday through Friday.

The agency is establishing new chemical specifications that identify the color additives more precisely than those specifications currently in Part 82. The agency concludes that it is necessary to include in the listing regulations for D&C Red Nos. 21 and 22 a brief description of their manufacturing processes to ensure the safety of the color additives. The agency is concerned that the color additives may contain potentially toxic impurities dependent upon the manufacturing processes used to produce the color additives. The agency is not able at this time to set specifications that would control the presence of these impurities. The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex.

Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by the NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general description, the manufacturing process in the regulations for these color additives will provide an adequate assurance of safety until suitable specifications can be developed. Production of the color additives by the specified methods will assure qualitatively similar batches and thus adequately assure the absence of unanticipated potentially toxic impurities. Also, the chemical names for the two color additives in the new listings under 21 CFR Part 74 are different from the names currently listed under 21 CFR Part 82 and from the Chemical Abstracts designations. The agency has decided to follow the nomenclature commonly used in the chemical literature where these color additives are referred to as fluorescein derivatives.

The agency has determined pursuant to 21 CFR 25.24(b)(12) and (d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 74

Color additives, Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lake, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b),(c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

a. By adding new § 74.1321 to Subpart B to read as follows:

§ 74.1321 D&C Red No. 21.

(a) *Identity.* (1) The color additive D&C Red No. 21 is principally 2',4',5',7'-tetrabromofluorescein (CAS Reg. No. 15086–94–9), and may contain smaller amounts of 2',4',5'-tribromofluorescein (CAS Reg. No. 25709–83–5) and 2',4',7'—tribromofluorescein (CAS Reg. No. 25709–84–6). The color additive is manufactured by brominating fluorescein with elemental bromine. The fluorescein is manufactured by the acid condensation of resorcinol and phthalic acid or its anhydride. The fluorescein is isolated and partially purified prior to bromination.

(2) Color additive mixtures for drug use made with D&C Red No. 21 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* The color additive D&C Red No. 21 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135° C) and halides and sulfates (calculated as sodium salts), not more than 10 percent.
Insoluble matter (alkaline solution), not more than 0.5 percent.
Phthalic acid, not more than 1 percent.
2-(3,5-Dibromo-2,4-dihydroxybenzoyl) benzoic acid, not more than 0.5 percent.
2',4',5',7'-Tetrabromofluorescein, ethyl ester, not more than 1 percent.
Brominated resorcinol, not more than 0.4 percent.
Fluorescein, not more than 0.2 percent.
Sum of mono- and dibromofluoresceins, not more than 2 percent.
Tribromofluoresceins, not more than 11 percent.
2',4',5',7'-Tetrabromofluorescein, not less than 87 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 90 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 21 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 21 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.1322 to Subpart B to read as follows:

§ 74.1322 D&C Red No. 22.

(a) *Identity.* (1) The color additive D&C Red No. 22 is principally the disodium salt of 2',4',5'7'-tetrabromofluorescein (CAS Reg. No. 17372–87–1) and may contain smaller amounts of the disodium salts of 2',4',5'-tribomofluorescein and 2',4',7'-tribromofluorescein. The color additive is manufactured by alkaline hydrolysis of 2',4',5',7'-tetrabromofluorescein. 2',4',5',7'-Tetrabromofluorescein is manufactured by brominating fluorescein with elemental bromine. The fluorescein is manufactured by the acid condensation of resorcinol and phthalic acid or its anhydride. Fluorescein is isolated and partially purified prior to bromination.

(2) Color additive mixtures for drug use made with Red No. 22 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Specifications.* The color additive D&C Red No. 22 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135°C) and halides and sulfates (calculated as soduim salts), not more than 10 percent.
Water-insoluble matter not more than 0.5 percent.
Disodium salt of phthalic acid, not more than 1 percent.
Sodium salt of 2-(3,5-Dibromo-2,4-dihydroxybenzoyl)benzoic acid, not more than 0.5 percent.
2',4',5',7'-Tetrabromofluorescein, ethyl ester, not more than 1 percent.
Brominated resorcinol, not more than 0.4 percent.
Sum of disodium salts of mono- and dibromofluoresceins, not more than 2 percent.
Sum of disodium salts of tribromofluoresceins, not more than 25 percent.
Disodium salt of 2',4',5',7'-Tetrabromofluorescein, not less than 72 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 90 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 22 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Red No. 22 shall be certified in accordance with regulations in Part 80 of this chapter.

c. By adding new § 74.2321 to Subpart C to read as follows:

§ 74.2321 D&C Red No. 21.

(a) *Identity and specifications.* The color additive D&C Red No. 21 shall conform in identity and specifications to the requirements of § 74.1321(a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 21 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 21 shall be certified in accordance with regulations in Part 80 of this chapter.

d. By adding new § 74.2322 to Subpart C to read as follows:

§ 74.2322 D&C Red No. 22.

(a) *Identity and specifications.* The color additive D&C Red No. 22 shall conform in identity and specifications to the requirements of § 74.1322(a)(1) and (b).

(b) *Uses and restrictions.* The color additive D&C Red No. 22 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Red No. 22 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* by removing the entries for "D&C Red No. 21" and "D&C Red No. 22" from the table in paragraph (b).

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing* by removing the entries for "D&C Red No. 21" and "D&C Red No. 22" from the table in paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended:

a. By revising § 82.1321 to read as follows:

§ 82.1321 D&C Red No. 21.

The color additive D&C Red No. 21 shall conform in identity and specifications to the requirements of § 74.1321 (a)(1) and (b) of this chapter.

b. By revising § 82.1322 to read as follows:

§ 82.1322 D&C Red No. 22.

The color additive D&C Red No. 22 shall conform in identity and specifications to the requirements of § 74.1322 (a)(1) and (b) of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 30, 1982, file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 3, 1983, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the **Federal Register.**

(Sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated November 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32729 Filed 11-26-82; 11:01 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 21 and D&C Red No. 22; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 21 and D&C Red No. 22 for use as a color additive in drugs and cosmetics. The new closing date will be March 1, 1983. This brief postponement will provide time for the receipt and evaluation of any objections submitted in response to the final regulation (published elsewhere in this issue of the **Federal Register**) approving the petition for the listing of D&C Red No. 21 and D&C Red No. 22 for these uses.

DATES: Effective November 29, 1982, the new closing date for D&C Red No. 21 and D&C Red No. 22 will be March 1, 1983.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of November 30, 1982, for the provisional listing of D&C Red No. 21 and D&C Red No. 22 by a rule published in the **Federal Register** of March 27, 1981 (46 FR 18958). The agency extended the closing date until November 30, 1982, to provide time for the completion of chronic toxicity studies and the review and evaluation of these studies by FDA.

After reviewing and evaluating the data, the agency has concluded that D&C Red No. 21 and D&C Red No. 22 are safe for use in drugs and cosmetics. Therefore, elsewhere in this issue of the **Federal Register**, FDA is publishing a regulation that lists D&C Red No. 21 and D&C Red No. 22 for these uses. The regulation set forth below will postpone the November 30, 1982 closing date for the provisional listing of these color additives until March 1, 1983. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the regulation that lists D&C Red No. 21 and D&C Red No. 22 for use in drugs and cosmetics.

Because of the shortness of time until the November 30, 1982 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. Moreover, good cause exists for issuing this postponement as a final rule because the agency has concluded that D&C Red No. 21 and D&C Red No. 22 are safe for their intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until March 1, 1983. To prevent any interruption in the provisional listings of D&C Red No. 21 and D&C Red No. 22 and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on November 29, 1982.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for D&C Red No. 21 and D&C Red No. 22 in paragraph (b) to read March 1, 1983.

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing date for D&C Red No. 21 and D&C Red No. 22 in paragraph (d) to read March 1, 1983.

Effective date. This final rule is effective November 29, 1982.

(Sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)).

Dated: November 16, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32728 Filed 11-26-82; 10:58 am]

BILLING CODE 4160-01-M

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21 CFR Part 178

[Docket No. 81F-0404]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

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 *n*-alkyl(C_{12}-C_{16}) benzyldimethylammonium chloride and didecyldimethylammonium chloride as components of a sanitizing solution for food-contact surfaces. This action is in response to a petition filed by Huntington Laboratories, Inc.

DATES: Effective November 30, 1982, objections by December 30, 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: James B. Lamb, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204; 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 26, 1982 (47 FR 13040), FDA announced that a petition (FAP 2H3601) had been filed by Huntington Laboratories, Inc., P.O. Box 710, Huntington, IN 46750, proposing that the food additive regulations be amended to provide for the safe use of *n*-alkyldimethylbenzylammonium chloride and didecyldimethylammonium chloride as components of a sanitizing solution to be used on food-contact surfaces.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive is more properly identified as *n*-alkyl(C_{12}-C_{16}) benzyldimethylammonium chloride and didecyldimethylammonium chloride, that its use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency 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 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 (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

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), § 178.1010 is amended by adding new paragraphs (b)(23) and (c)(18) to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(23) An aqueous solution containing *n*-alkyl (C_{12}-C_{16}) benzyl-dimethylammonium chloride and didecyldimethylammonium chloride.

(c) * * *

(18) Solutions identified in paragraph (b)(23) of this section shall provide at least 150 parts per million and not more than 200 parts per million of the active quaternary compound.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 30, 1982, submit to the Dockets Management Branch (address above), 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 November 30, 1982.

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

Dated: November 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32838 Filed 11-29-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

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

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Multifoods Corp. providing for safe and effective intramuscular or intravenous use of a dexamethasone injection in dogs, cats, and horses for its adrenal glucocorticoid and anti-inflammatory effect.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: International Multifoods Corp., 1200 Multifoods Bldg., 8th and Marquette Sts., Minneapolis, MN 55402, filed NADA 128–089 providing for intravenous or intramuscular use of a dexamethasone injection (Zonometh Solution) in dogs, cats, and horses. The product contains 2 milligrams of dexamethasone per milliliter. It is used for its rapid adrenal glucocorticoid and anti-inflammatory effect.

The product is similar to Schering's Azium (dexamethasone sterile injection), a National Academy of Sciences/National Research Council (NAS/NRC) reviewed product, which was found effective as an anti-inflammatory agent in dogs, cats, horses, and cattle. That product is codified in 21 CFR 522.540. International Multifoods' product is approved based on its being identical to the approved, NAS/NRC reviewed product. Data were submitted demonstrating bioequivalency between this product and Schering's Azium Solution in a six-by-six crossover study in horses conducted at Elar's Bioresearch Laboratories, Fort Collins, CO. Crossover analysis revealed no significant difference between this product and the NAS/NRC reviewed product, Azium Solution. NADA 128–089

is approved and the regulations are amended accordingly.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.540 by revising paragraph (d)(2)(i), to read as follows:

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

§ 522.540 Dexamethasone injection.

* * * * *

(d) * * *

(2) * * *

(i) Nos. 000029, 010271, and 012518 for intravenous or intramuscular use of 2.0 milligrams dexamethasone injection.

* * * * *

Effective date. November 30, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 22, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82–32674 Filed 11–29–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880 and 881

[Docket No. R–82–1032]

Section 8 Housing Assistance Payments Programs for New Construction and Substantial Rehabilitation; Technical Processing and Selection of Proposals

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule will limit the preference given "partially assisted projects" in the selection of proposals for technical processing and for Section 8 funding to those projects not relying on financing provided through the Government National Mortgage Association (GNMA) under the authority of Section 305 of the National Housing Act. Section 325(2) of the Housing and Community Development Amendments of 1981 amended Section 8(c)(5) of the U.S. Housing Act of 1937 to exclude from preferential consideration projects with mortgages subject to purchase by GNMA. These amendments incorporate this statutory change into HUD's procedures for ranking and selecting proposals for processing and funding.

DATES: Effective date: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Frank Brown, Office of Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 8 of the U.S. Housing Act of 1937 authorizes the Secretary to enter into assistance contracts with owners of existing, newly constructed, and substantially rehabilitated housing for the purpose of aiding lower-income families to obtain a decent place to live. Owners or prospective owners of newly constructed or substantially rehabilitated housing who wish to participate in the Section 8 program, pursuant to Part 880 or 881, are required to submit their proposals to HUD for review. After receiving a proposal, the HUD field office makes a preliminary evaluation of the proposal's eligibility for Section 8 assistance. Eligible proposals are then placed into technical processing prior to their approval for Section 8 funding.

In the event a field office cannot expeditiously process all of the proposals eligible for technical processing, HUD's regulations authorize the field office to rank the eligible proposals in order to eliminate the excess. Similarly, proposals which may be approved to receive Section 8 assistance may be ranked if the available contract authority is insufficient to fund all of the approvable proposals.

In this ranking process, Section 8(c)(5) of the U.S. Housing Act of 1937 authorized the Secretary to give preference to applications involving assistance for not more than 20 percent of the project's units over other projects for non-elderly families which include more than 50 units. Parts 880 and 881 currently allow partially assisted projects preferential consideration in the selection of proposals for technical processing and for funding.

Section 325(2) of the Housing and Community Development Amendments of 1981 amended Section 8(c)(5) to limit the preferential consideration to those partially assisted projects "which are not subject to mortgages purchased under section 305 of the National Housing Act." This final rule incorporates this statutory change into HUD's procedures for ranking and selecting proposals for processing and funding by excluding from preferential consideration projects relying on permanent financing provided through the Government National Mortgage Association. It should be noted, however, that the Department, has not given preferential consideration to partially assisted projects covered by tandem commitments since October 1, 1981, the effective date of the statutory amendment, and thus has been in full compliance with the law since its effectiveness. Because this rule only confirms a restriction on preference consideration already required by statute, public comment is unnecessary, and good cause exists for making this rule effective as a final rule without providing for a public comment period.

The Department has also determined that, for the reasons stated above, good cause exists for making this final rule effective less than 30 days after its publication in the **Federal Register.** However, Section 7(o)(3) of the

Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers but, at the time of publication of this final rule, it is not known whether or when such waivers will be granted. Accordingly, a further notice of the effective date of this final rule will be published in the **Federal Register.**

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 implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 7th Street, SW., Washington, D.C. 20410.

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

Pursuant to the provisions of 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. In accordance with Section 325(2) of the Housing and Community Development Amendments of 1981, this rule excludes proposals relying on permanent financing provided through the Government National Mortgage Association from the preferential consideration given partially assisted projects. This preference is just one of numerous factors considered by HUD in its evaluation and is not determinative of whether a proposal will be selected for processing or for Section 8 funding.

This rule was listed as item H-134-82 in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422, 48425) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number is 14.146 (Lower Income Housing Assistance Program (C)).

List of Subjects in 24 CFR Parts 880 and 881

Grant programs—Housing and Community Development, Housing assistance payments, Lower income housing.

Accordingly, 24 CFR Part 880 is amended by amending §§ 880.306 and 880.307 as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. In § 880.306, paragraph (b)(2) is revised to read as follows:

§ 880.306 Preliminary evaluation and technical processing.

* * * * *

(b) * * *

(2) Preference points in selection of proposals for technical processing will be given to small projects and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act).

* * * * *

2. In § 880.307, paragraph (b) is revised to read as follows:

§ 880.307 Selection of proposal and use of remaining or additional contract authority.

* * * * *

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). The ranking factors are: Rents; site (including minority concentration considerations); design; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the A-95 clearinghouse and local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing and included in the developer's packet.

* * * * *

24 CFR Part 881 is amended by amending §§ 881.306 and 881.307 as follows:

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

1. In § 881.306, paragraph (b)(2) is revised to read as follows:

§ 881.306 Preliminary evaluation and technical processing.

* * * * *

(b) * * *

(2) Preference points in selection of proposals for technical processing will be given to small projects (where no specific amount of contract authority is made available in the NOFA) and partially-assisted projects (except partially-assisted projects relying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act).

* * * * *

2. In § 881.307, paragraph (b) is revised to read as follows:

§ 881.307 Selection of proposals and use of remaining or additional contract authority.

* * * * *

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). If the NOFA indicated that a specific portion of the contract authority may be utilized only for small projects, any proposals for such projects shall be ranked separately and not in competition with other non-elderly proposals. The ranking factors are: rents; site (including minority concentration considerations); design; suitability and potential of property for rehabilitation and adequacy of rehabilitation proposed; previous experience of the owner and other participants in development, marketing and management (particularly of non-

elderly family housing); comments from the A–95 clearinghouse and local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects (where no specific amount of contract authority is made available in the NOFA) and partially-assisted projects (except partially-assisted projects relaying on permanent financing available through the Government National Mortgage Association under the authority of Section 305 of the National Housing Act). Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing and included in the developer's packet.

* * * * *

(Sec. 325(a), Housing and Community Development Amendments of 1981, Sec. 8, U.S. Housing Act of 1937 (42 U.S.C. 1437f); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: October 22, 1982.

Philip Abrams,

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

[FR Doc. 82-32691 Filed 11-29-82; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) Has determined that USS FLORIDA (SSBN 728); USS RHODE ISLAND (SSBN 730); and USS ALABAMA (SSBN 731), are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval submarines; and (2) has found that USS FLORIDA (SSBN 728), USS RHODE ISLAND (SSBN 730), and USS ALABAMA (SSBN 731), are members of the SSN 688 Class of ships, exemptions for which have previously been granted under 72 COLREGS, Rule 38. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 15, 1982.

FOR FURTHER INFORMATION CONTACT: Captain Richard M. McCarthy, JAGC, USN, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332. Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS FLORIDA (SSBN 728), USS RHODE ISLAND (SSBN 730), and USS ALABAMA (SSBN 731), are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, Section 2(a)(i) pertaining to the height of the masthead light; 72 COLREGS, Annex I, Section 2(k) pertaining to the height and relative positions of the anchor lights; 72 COLREGS, Annex I, Section 3(b) pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of these submarines. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements. Notice is also provided to the effect that USS FLORIDA (SSBN 728), USS RHODE ISLAND (SSBN 730), and USS ALABAMA (SSBN 731), are members of the SSN 688 Class of submarines for which certain exemptions, pursuant to 72 COLREGS, Rule 38, has been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS FLORIDA (SSBN 728), USS RHODE ISLAND (SSBN 730), and USS ALABAMA (SSBN 731).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner different from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Three of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by inserting the following entry:

Vessel	Number	Masthead light, arc of visibility; Rule 21(a)	Sidelights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Sidelights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light, distance forward of stern in meters; Rule 21(c)	Forward Anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
*	*	*	*	*	*	*	*	
USS FLORIDA	SSBN 728			209°	5.3	9.0	3.8	4.0 below.
USS RHODE ISLAND	SSBN 730			209°	5.3	9.0	3.8	4.0 below.
USS ALABAMA	SSBN 731			209°	5.3	9.0	3.8	4.0 below.

2. Table One of § 706.2 is amended to indicate certifications issued by the Secretary of the Navy by insertion of the following entry:

Vessels	Number	Distance in meters of forward masthead light below minimum required height, Section 2(a)(i), Annex I
* * * * *		
USS FLORIDA	SSBN 728	3.70
USS RHODE ISLAND	SSBN 730	3.70
USS ALABAMA	SSBN 731	3.70

(Executive Order 11964; 33 U.S.C. 1605)

Dated: November 15, 1982.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 82-32554 Filed 11-29-82; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

41 CFR Part 9-9

Inventions Made Under Federal Funding Agreements With Small Business Firms and Nonprofit Organizations; Policy Statement

AGENCY: Department of Energy.

ACTION: Policy statement.

SUMMARY: Sections 202–204 of Pub. L. 96–517 govern the disposition of rights in inventions made under federal funding agreements with small business firms and nonprofit organizations. In OMB Bulletin 81–22 the Office of Federal Procurement Policy (OFPP) issued regulations implementing the provisions of Sections 202–204 and establishing standard funding agreement provisions.

On October 20, 1981 (46 FR 51371), the Department of Energy (DOE) issued a policy statement stating that in funding agreements with small business firms and nonprofit organizations (as defined in Pub. L. 96–517), it will use the regulations and standard funding agreement provisions contained in OMB Bulletin 81–22, which supersede the DOE Procurement Regulations (DOE–PR) of 41 CFR Part 9–9 insofar as they are applicable to small business firms and nonprofit organizations.

OMB Circular A–124 was issued February 19, 1982, superseding OMB Bulletin 81–22. Accordingly, DOE is using the regulations and standard funding agreement provisions of OMB Circular A–124 in the manner previously described for OMB Bulletin 81–22.

EFFECTIVE DATE: February 19, 1983.

FOR FURTHER INFORMATION CONTACT: James E. Denny, Assistant General Counsel for Patents, Department of Energy, Washington, D.C. 20585, (202) 252–2806.

Issued in Washington, D.C., on November 24, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 82-32852 Filed 11-29-82; 8:45 am]

BILLING CODE 6450-01-M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

41 CFR Part 101-20

[FPMR Amdt. D-80]

Management of Buildings and Grounds; Display of Code of Ethics for Government Service

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation implements Pub. L. 96–303, an act to provide for the display of the Code of Ethics for Government Service. The act requires the Administrator to provide for the publication and distribution of the Code; to prescribe regulations by which each agency (executive agency, the U.S. Postal Service, and the Postal Rate Commission) shall display the Code in appropriate areas of buildings in which at least 20 individuals are regularly employed by an agency as civilian employees; and to accept any unconditional gift made for the purpose of the act. The act further states that there shall be no cost imposed on the Federal Government for the printing, framing, or other preparation of the Code. This does not mean that appropriate hardware cannot be used for display. This regulation also requires that the Code be appropriately displayed in public space in Government-owned or fully Government-occupied leased buildings, such as lobbies, auditoriums, cafeterias, and other high traffic areas.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Saul Katz, Special Counsel for Ethics, Office of the Administrator (566–1212) or Mr. James A. Marsden, Director, Operations Division, Office of Buildings Management (566–1563).

SUPPLEMENTARY INFORMATION: On November 3, 1980, a notice of proposed rulemaking was published in the **Federal Register** (45 FR 72714) concerning the Display of the Code of Ethics for Government Service. Interested Parties were given an opportunity to submit comments on or before January 2, 1981. No comments were received. The General Services Administration has determined that this proposal will not be considered a major rule under EO 12291 of February 17, 1981, because it is not likely to: Have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects.

List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

PART 101-20—MANAGEMENT OF BUILDINGS AND GROUNDS

Subpart 101–20.4 is added to Part 101–20 to read as follows:

Subpart 101-20.4—Display of the Code of Ethics for Government Service

Sec.

101–20.400—Applicability.
101–20.401—General Services Administration responsibility.
101–20.402 Applicability in Government-owned and leased buildings.
101–20.403 Applicability to agencies.
101–20.404 Display of the Code.
101–20.405 Availability.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-20.4—Display of the Government Code of Ethics for Government Service

§ 101-20.400 Applicability.

These regulations apply to all executive agencies (as defined by section 105 of title 5, U.S. Code), the U.S. Postal Service, and the Postal Rate Commission in accordance with the contents of Pub. L. 96–303. The heads of these agencies shall be responsible for ensuring that these rules and regulations are observed within their agencies.

§ 101-20.401 General Services Administration responsibility.

The Administrator of General Services is charged by Pub. L. 96–303 with prescribing regulations by which each agency shall display the Code of Ethics for Government Service; providing for the publication and distribution of the Code, and accepting unconditional gifts for the purposes of the act.

§ 101-20.402 Applicability in Government-owned and leased buildings.

Each agency, as defined in § 101-20.400, shall display conspicuously at least one copy of the Code in each Government-owned or wholly leased building under its custody and/or control in which at least 20 civilian employees are regularly employed. This copy normally shall be displayed in the lobby of the main entrances to the building. Additional copies may be displayed in other appropriate locations such as auditoriums, cafeterias, and other high traffic areas. For applicability to other leased buildings see § 101-20.403.

§ 101-20.403 Applicability to agencies.

Each agency, as defined in § 101-20.400, which has at least 20 civilian employees regularly employed in a building owned, leased, or otherwise provided to the Federal Government for the purpose of performing official business of the Government shall display conspicuously at least one copy of the Code within its space on the premises. Copies may be displayed in reception areas, locker rooms, other high traffic areas, or on bulletin boards.

§ 101-20.404 Display of the Code.

Agencies of the Federal Government shall not pay any costs for the printing, framing, or other preparation of the Code, as the Administrator of General Services is charged with providing for the publication and distribution of the Code (see § 101-20.401). Agencies may properly pay incidental expenses, such as the cost of hardware, other materials, and labor incurred to display the Code. Display shall be consistent with the decor and architecture of the building space. Installation shall cause no permanent damage to stonework or other surfaces which are difficult to maintain or repair.

§ 101-20.405 Availability.

Agencies may obtain copies of the Code of Ethics for Government Service poster by submitting a requisition in FEDSTRIP format to the GSA regional office providing support to the requisitioning agency. Ordering information for the poster is as follows: National stock number (NSN) 7690-01-099-8167; unit of issue—ea.; and unit price—50 cents to cover shipping and handling.

Dated: November 1, 1982.

Gerald P. Carmen,

Administrator of General Services.

[FR Doc. 82-32675 Filed 11-29-82; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 121

National Guidelines for Health Planning; Rescission of Computed Tomographic Scanner Standards

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This document removes from regulations Federal standards for computed tomographic (CT) scanners with respect to the appropriate supply, distribution and organization of health resources. Based on concerns discussed in the notice of proposed rulemaking published on May 20, 1982, and subsequent comments, the Secretary has decided the standards are too rigid and inflexible, and that they do not take into account recent advances in the state-of-the-art in scanning technology. This action gives states and local communities the fullest possible discretion and flexibility in the review and planning for expenditures related to this technology. The Department is making non-regulatory technical information materials concerning CT scanners available to the public.

EFFECTIVE DATE: This rule is effective on November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Lyman Van Nostrand, Director, Division of Program Planning, OPEL, Health Resources and Services Administration, Parklawn Building, Room 14-33, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1900.

SUPPLEMENTARY INFORMATION:

A. Overview

Section 1501 of the Public Health Service Act (the Act) requires the Secretary to issue by regulation guidelines concerning national health planning policy. The guidelines must include standards respecting the appropriate supply, distribution, and organization of health resources including those which reflect the unique circumstances of isolated rural communities and other medically underserved populations.

On March 28, 1978 the Secretary published as final regulations the first issuance of National Guidelines for Health Planning (42 CFR Part 121; 43 FR 13040). Those regulations consist of Subpart A—General Provisions, and Subpart C—Standards Respecting the Appropriate Supply Distribution, and Organization of Health Resources which includes specific standards respecting computed tomographic (CT) scanners.

Under these standards, new scanners should not be added in a health service area unless all the existing scanners are operating above an established rate measured in medically necessary patient procedures per year. The preamble to these final regulations, in discussing the CT scanner standards (see 43 FR 13043-4) recognized the CT scanning is a rapidly changing field and stated that developments would be carefully and continually monitored.

In a notice of proposed rulemaking issued on May 20, 1982, the Secretary proposed to rescind that portion of the final regulations of March 28, 1978, which relates to specific standards respecting computed tomographic scanners.

The NPRM cited a number of objections which have been raised to those standards, since final publication of the original regulation in 1978. Some of these concerns were that the original regulations do not adequately take into account recent advances in the state-of-the-art of CT scanning technology, specifically those that have resulted in an increased proportion of body scans being performed; that the standards are rigid and inflexible because they do not specifically require that the differing scan types and times or factors relating to local circumstances be considered; that the inflexibility in application of the standards has acted in some cases to obstruct the sale and distribution of needed scanners, thus inhibiting access to necessary CT scanning services and preventing the public from fully benefiting from their potential; and that many sparsely populated rural areas lack the population base to reach the existing standard of 2500 patient procedures per year and therefore have had limited access to necessary CT scans.

An important contribution to monitoring of changes in this field was the recent Concensus Development Conference, held by the National Institutes of Health on November 4-6, 1981. The Conference was held in order to seek a position on issues involving CT scanning of the brain. Among the conclusions of that Conference were that: (a) CT scanning may not be sufficiently available for the public to derive the full benefit of its potential; and (b) the costs resulting from the use of CT in diagnoses are substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment needed to carry them out.

Four years' experience with the standards has led the Department to conclude that these concerns are well founded and that the standards are inappropriate and should be rescinded. This position is consistent with the Department's policy that States and local communities should have the fullest possible discretion and flexibility in health planning. Rescission of the standards will help ensure that decisions on the distribution of CT scanners are made at the State and local level.

In view of current developments regarding the Federal health planning programs, the Department has no present intention of issuing revised CT scanner standards in regulatory form. The Department has developed, however, nonregulatory up-to-date technical information materials concerning CT scanners, based on previous extensive consultation and consensus development with a wide range of individual experts and outside organizations. These materials are available to the public on request. State and local planning agencies and others will be free to use the information as they see fit in developing or implementing their health plans.

B. Process of Consultation

Section 1501(c) of the Public Health Service Act requries that:

(c) At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) or a revision under subsection (d) of such guidelines, the Secretary shall, with respect to such proposed guideline or revision, consult with and solicit recommendations and comments from the health systems agencies designated under part B, the State health planning and development agencies designated under part C, the Statewide Health Coordinating Councils established under part C, associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development established by Section 1503.

Accordingly, a draft notice of proposed rulemaking to rescind the existing CT standards was sent to a selected list of reviewers on December 8, 1981. This included Health Systems Agencies, State Health Planning and Development Agencies, Statewide Health Coordinating Councils, and members of the National Council on Health Planning and Development. Copies were also sent to a selected list of associations and specialty societies, most particularly those which had participated in a previously established workgroup: The Technical Workgroup on CT Scanning Standards. This included representation from such groups as the American College of Radiology, the National Electrical Manufacturer's Association, and the Consumer Coalition for Health.

The results of that first comment phase were a total of 19 comments, of which 15 favored rescission of the CT standards and four were opposed.

Subsequent to that, a notice of proposed rulemaking was published on May 20, 1982, soliciting comments on the proposed rescission of the CT standard. As of July 12, a total of 73 letters of response were received.

C. Summary of Comments

Of the 73 comments received, 69 of the respondents favored rescinding the CT standards, while 4 were opposed.

Commonly cited reasons for support of rescission were:

1. The efficacy of CT scanning as a treatment modality has more than outweighed the expense involved.
2. The regulations do not reflect recent technological advances.
3. The regulations are inflexible and make insufficient provision for exception to the minimum usage guidelines.
4. The regulations have resulted in a maldistribution of scanning equipment.
5. The regulations have precluded the development of a competitive market for scanners.

Each of these reasons is expanded below. Specific comments are included.

1. *Efficacy Outweighs Expense:* The current state-of-the-art of CT scanning as a medical diagnostic tool, while expensive, more than justifies the dollar outlay included in the purchase of the machine and the high cost of its usage to patients and third party reimbursement plans. Several respondents commented that the cost of medical diagnosis is actually reduced because physicians can ascertain more from scanning than they could from several other diagnostic procedures used previously in its stead.

2. *Recent Technological Advances:* Since 1978, advances in the state-of-the-art of CT scanning technology have resulted in an increasing proportion of body scans being performed, which take a longer amount of time to complete than head scans. The current regulatory standard does not respond to these advances because it does not take into account the increasing number of body scans performed and the longer time necessary to complete each scan.

In general, rapid technological advances have made the regulations obsolete. When first developed, scanners were limited to usage in the diagnoses of head pathology. In the years to follow technological improvements in image definition coupled with the concomitant development of body scanners rapidly established the scanners as a primary radiological diagnostic tool. The use of CT currently is the diagnostic procedure of choice in a wide variety of human pathology. Regulatory measures designed to establish minimum usage standards to prevent a rapid proliferation in the number of scanners purchased were based on early model performance and logically have little applicability to modern scanners. The current guidelines were cited as restrictive and not in keeping with the state-of-the-art of CT scanner technology.

3. *Inflexibility of the Current Standard.* Objections have been raised to the existing standard which is expressed in terms of a single uniform number of patient procedures to be reached annually. It is seen as rigid and inflexible, because it does not take into account the different scan types and times nor additional circumstances which should be taken into account in using the standard. In addition, objections have been raised that the inflexibility of the standard acts in some cases to obstruct the sale and distribution of needed scanners, inhibits access to necessary CT scanning services and thus affects the quality of patient care.

Several respondents commented that state and local jurisdictions must have the authority and flexibility to set their own standards. Others called the current standards rigid and claimed that the HSAs have been inflexible in enforcing them. As a result, large segments of the population have been denied access to CT scanners. Minimum usage standards for existing scanners which may restrict the purchase of additional scanners within a particular delivery area preclude many localities from adequately meeting their own diagnostic medical needs. For example, many densely populated counties in and around large cities are restricted from the purchase of needed scanners by an under-utilized machine in a large city hospital within the same delivery area. Consequently, many large populations do not have adequate access to this major medical diagnostic tool.

4. *Maldistribution of Scanning Equipment.* The effects of the maldistribution of CT scanners are most noticeable in rural, sparsely populated, medically underserved and inner city areas. The present standard impairs access to CT scanning services in such areas, because these areas lack either the population base or necessary level of reimbursement to reach the existing

standard of 2500 patient procedures per year. In such instances, scanner usage is inadequate to meet the regulatory minimum requirement. As a result, new scanner purchases are precluded and the residents travel to other areas to have access to those already in place. Several respondents alluded to the difficulties associated with such traveling. The expense, inconvenience, the time delays, the medical risk involved and the danger of malpractice actions were all cited as negative results of this problem.

One respondent stated that many large multi-purpose hospitals have no scanners and have to interrupt the continuity of complete diagnostic workups in order to transport patients to other hospitals for CT scanner procedures. Several others referenced the unfairness of specialty hospitals (pediatrics, trauma) being without scanners because of the regulations and the emergency conditions under which some of their very sick patients are transported long distances for CT scanning. The scarcity of scanners in some locations and in some hospitals has maintained the use of other more invasive, less effective diagnostic tests at much higher levels than should be necessary.

5. *Lack of a Competitive Market.* The elimination of Federal CT standards and the subsequent adoption of planning methodologies and guidelines by the individual states could serve to foster a competitive market in health care, which would provide the immediate opportunity for facilities in need of but previously lacking scanners to apply to the local jurisdictions for a scanner. Some respondents noted that the existence of a competitive market for scanners would lower their price and increase their availability. Another noted that the present regulations provide an unfair competitive advantage to those facilities who purchased early generation equipment, because those that waited for technological improvements to occur were not able to purchase scanning equipment at a later date.

Four of the seventy-three respondents opposed rescinding the regulations. Their reasons included:

1. Potential concern about over-proliferation in scanner sales as a result of regulation rescission.

2. Concern about over-purchasing, which potentially could lead to increased scanner obsolescence upon development of the next technological generation.

3. Concern that the operating expenses caused by a scanner are substantial and beyond the original cost of the capital investment.

4. Concern that the combination of technological advances and increased physician skills may result in an appearance of "need" for scanners, which may not actually be present.

Each of these reasons is expanded on below. Specific comments are included and our response is summarized at the end.

1. *Over-Proliferation.* Concern was expressed that rescission of the standard would cause over-proliferation of scanners. One respondent contended that availability increases excess utilization and that the proliferation of such scanners into doctors' offices and hospitals has been very costly to the payers of health care. The commenter was concerned that unrestrained use of such services will lead to abuse and the health care industry will be less cost conscious than it should. The commenter believed that cost awareness incentives will be more effective.

To the contrary, one respondent expressed disappointment that the proposed action has been widely misinterpreted in the media, and noted that concerns about proliferation of scanners subsequent to rescission of the Federal standard ignore the fact that new scanner purchases will still need State and local approval under the certificate-of-need process in most states.

2. *Over-Purchasing Leading to Increased Technological Obsolescence.* Some respondents endorsed the initial regulations because they provided a "brake" upon the desires of large segments of the medical community to purchase scanners immediately in order to maintain the "state-of-the-art". Such a brake provided a cushion against massive depreciation. The current concern of these commenters centers around the necessity for the presence of a continuing brake, as the technology is still rapidly advancing.

3. *Increase in Operating Expenses.* Concern exists that although the technology has evolved to a point where its diagnostic use and cost effectiveness is unquestioned, there is still a marked capital and operating expenditure impact to the system caused by addition or upgrading of equipment.

Operating costs associated with the capital expenditure accrue from additional staffing, plant maintenance, and supplies associated with the new service. These costs as well as the capital costs are usually allowable costs for reimbursement. Therefore, while the initial capital investment may be relatively minimal, the subsequent operating costs to the system are substantial. Removing the planning "brake" on the proliferation of CT scanners should be reconsidered in light of the significant operating expenditures resulting from these capital investments.

4. *Concern About a False Sense of "Need".* One respondent expressed the view that the planning and regulation of major medical technologies can no longer be based on a single standard which only addresses the introduction of such equipment into the industry. Since the development of major medical technologies is evolutionary, then the development of standards for their planning and certification must also be evolutionary. For example, the initial introduction of most major medical equipment is usually relatively expensive and quickly refined into more afforable models. As the technology develops, the cost of the equipment declines and the experience of physicians with the technology increases. Frequently, this combination of factors leads to a perception of "need" for the equipment which is not based on the actual medical necessity of the population. This respondent recommended that the Department should replace population based guidelines wih case-mix-justified need assessments.

Based on the reaction to the NPRM, the Department has determined that it is appropriate to rescind the CT scanning standard. Many of the concerns about over-proliferation of scanners and resulting operating costs ignore the fact that, in many cases, proposed purchase of a CT scanner will still have to go through a process of state review. The major difference is that each state will now be able to set its own standards for both planning and medical expenditure reviews of proposed CT scanner purchases. Consequently, we do not believe rescission of this standard will cause a sharp upward shift in the number of scanners. Instead, it increases the flexibility of states to set their own standards, taking into account local needs and special circumstances.

D. Determination of Applicability of Certain Impact Analyses

For reasons discussed in the NPRM dated May 20, 1982, the Department has determined that this proposed rule is not a "major rule" under Executive Order 12291. A regulatory impact analysis is not required because it will not:

1. Have an annual effect on the economy of $100 million or more;

2. Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local

government agencies or geographic regions; or

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

Data indicate that the costs of CT in diagnosis have been substantially offset by a reduction in costs resulting from discontinued procedures and the elimination of equipment needed to carry them out. In some cases net costs of diagnoses have even been reduced. The 1981 National Institutes of Health Consensus Development Conference on issues involving computed tomographic scanning of the brain heard evidence that the use of CT in outpatient diagnosis holds the potential for reducing hospital admissions and shortening hospital stay.

Amendments included in the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35) have raised the thresholds for determining when capital expenditures must be reviewed. For major medical equipment, the threshold was raised from $150,000 to $400,000. For the annual operation cost threshold, this was raised from $75,000 to $250,000. Both changes have served to exempt a number of CT scanner purchases from review, particularly brain scanners.

In addition, under the Health Planning Amendments of 1979, a certificate of need is not required for the acquisition of major medical equipment which will not be owned by or located in a health care facility, unless the equipment will be used to provide services for inpatients of a hospital. Recent data from the January, 1981 Background Paper on CT Scanners by the Office of Technology Assessment indicate that 18.9 percent of scanners are now in offices and clinics.

These various amendments have all tended to limit the scope of coverage of the certificate of need process, and consequently the CT standard in the National Guidelines, as they related to the purchase of CT scanning equipment.

The Department has also determined that this proposed rule will not have a significant impact on small business and therefore does not require preparation of a Regulatory Flexibility Analysis under the Regulatory Flexibility Act Public Law 96–354.

List of Subjects in 42 CFR Part 121

Health planning, CT Scanner standards.

Accordingly, § 121.210 of 42 CFR Part 121 is rescinded.

Dated: October 5, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: November 2, 1982.

Richard S. Schweiker,

Secretary.

PART 121—NATIONAL GUIDELINES FOR HEALTH PLANNING

Subpart C—Standards Respecting the Appropriate Supply, Distribution, and Organization of Health Resources

For the reasons set out in the preamble, Part 121, Chapter I, of Title 42 of the Code of Federal Regulations is amended as follows:

§ 121.210 Computed tomographic scanners. [Removed]

Part 121 is amended by removing § 121.210.

[FR Doc. 82–32643 Filed 11–29–82; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6459]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287–0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be will be published in the Federal Register.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is

subject to procedures set out in OMB Circular A–95.

Pursuant to the provision of 5 USC 605(b), the Associate Director of State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

State and County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Arizona: Yavapai	Clarkdale, town of	040095B	Sept. 23, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Aug. 23, 1974, Nov. 28, 1975	Dec. 1, 1982
Connecticut: Middlesex	Westbrook, town of	090070B	Mar. 9, 1973, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Nov. 23, 1973, Oct. 15, 1976	Do.
Illinois: Scott	Naples, village of	170609B	Mar. 6, 1974, Emergency; May 17, 1982, regular; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Apr. 2, 1976, Jan. 9, 1974	Do.
Indiana:					
Blackford	Hartford City, city of	180009B	Aug. 19, 1976, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Nov. 23, 1973, Mar. 5, 1976	Do.
Grant	Marion, city of	180412B	July 25, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Apr. 8, 1977	Do.
Rush	Unincorporated areas	180421B	May 7, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	June 3, 1977	Do.
Dearborn	Unincorporated areas	180038B	Apr. 3, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Apr. 7, 1978	Do.
Michigan: Oakland	Keego Harbor, city of	260173B	June 20, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	May 24, 1974, Feb. 13, 1976	Do.
Montana:					
Fergus	Unincorporated areas	300019B	Apr. 13, 1978, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Apr. 13, 1978	Do.
Fergus	Grass Range, town of	300021A	Oct. 7, 1981, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Dec. 27, 1974	Do.
New Jersey:					
Cumberland	Commercial, township of	340166B	July 23, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Aug. 23, 1974, Mar. 19, 1976	Do.
Gloucester	East Greenwich, township of	340200B	Mar. 27, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Sept. 23, 1974, July 23, 1976	Do.
Camden	Gloucester, township of	340133A	July 24, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Dec. 13, 1974	Do.
Bergen	Hackensack, city of	340039B	Oct. 2, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	June 28, 1974, Sept. 31, 1975	Do.
Monmouth	Hazlet, township of	340298B	Feb. 11, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Jan. 9, 1974, Apr. 30, 1976	Do.
New York:					
Greene	Hunter, village of	360293	Oct. 1, 1976, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Aug. 16, 1974	Do.
Columbia	Kinderhook town of	361321B	Oct. 18, 1978, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.		Do.
Do	Kinderhook, village of	361048C	Apr. 4, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Apr. 4, 1974, Jan. 20, 1978	Do.
Cortland	McGraw, village of	360184B	Mar. 12, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Sept. 3, 1976, Mar. 29, 1974	Do.
Albany	New Scotland, town of	360013B	July 31, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	May 10, 1974, July 16, 1976	Do.
Do	Voorheesville, village of	360015B	June 11, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Apr. 12, 1974, July 2, 1976	Do.
Oregon: Yamhill	McMinnville, city of	410255C	July 22, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Feb. 15, 1974, Dec. 20, 1974, Sept. 19, 1975.	Do.
Pennsylvania:					
Erie	Springfield, township of	421369C	Dec. 2, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	June 25, 1976, Mar. 21, 1980	Do.
York	Yoe, borough of	420944B	July 29, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	June 28, 1974, Aug. 27, 1976	Do.
Tennessee:					
Shelby	Memphis, city of	470177B	Aug. 23, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Aug. 23, 1974, Feb. 9, 1979	Do.
Do	Unincorporated areas	470214B	May 15, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Aug. 4, 1978	Do.
Wisconsin:					
Walworth	East Troy, village of	550464C	Dec. 12, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	May 24, 1974, May 14, 1976, Nov. 10, 1978.	Do.
Waukesha	Hartland, village of	550481C	July 25, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Nov. 30, 1973, May 14, 1976, Apr. 15, 1977.	Do.
Walworth	Lake Geneva, city of	550466B	Nov. 13, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Dec. 28, 1973, May 14, 1976	Do.
Waukesha	Lannon, village of	550482B	July 18, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	Dec. 28, 1973, May 21, 1976	Do.
Green	Monroe, city of	550162C	May 1, 1975, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	May 31, 1974, May 28, 1976, June 12, 1981.	Do.
Waukesha	Muskego, city of	550486B	Apr. 12, 1974, Emergency; Dec. 1, 1982, Regular; Dec. 1, 1982, Suspended.	June 21, 1974, Aug. 6, 1976	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: November 22, 1982.

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 82-32641 Filed 11-29-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-358; RM-4057]

FM Broadcast Stations in Anchorage and Wasilla, Alaska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 259 to Wasilla, Alaska, in response to a petition filed by Snow Peak Corporation. The assigned channel could provide a first aural broadcast service to Wasilla.

DATE: Effective January 17, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: November 3, 1982.

Released: November 16, 1982.

1. Before the Commission is the Notice of Proposed Rule Making and Order to Show Cause, 47 FR 31013, published July 16, 1982, proposing the assignment of Channel 289 to Wasilla, Alaska, in response to a petition filed by Snow Peak Corporation ("petitioner"). The Notice also proposed the substitution of Channel 285A for Channel 288A at Anchorage, Alaska, and modification of the license of Northern Television.

2. Snow Peak later filed joint comments with Northern Television, Inc. proposing the assignment of Channel 259 to Wasilla, Alaska, instead of Channel 289 and the substitution of Channel 287 for Channel 288A at Anchorage.[1] They state that the proposed assignment and substitution of channels fully comply with the mileage separation requirements. Northern Television also requests a modification of its license for Station KNIK–FM to specify the Class C channel (Channel 287).

3. The request of Northern Television to operate a Class C station instead of a Class A facility at Anchorage had not been proposed previously. Therefore, we decided to issue a separate Notice of Proposed Rule Making, 47 FR 46727, published October 20, 1982, in order to afford other interested parties a full opportunity to state their interest in the new Class C channel as is our usual policy. Cheyenne, Wyoming, 62 F.C.C. 2d 63 (1976).

4. As for Wasilla, we conclude that the assignment of a Class C channel as a first local aural service would serve the public interest.

5. In view of the foregoing and under the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended and §§ 0.204 and 0.281 of the Commission's Rules, it is ordered, that effective January 17, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Wasilla, Alaska	259

6. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-32604 Filed 11-29-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Alaska Village Missions, Inc., submitted comments in opposition to the proposed substitution of Channel 285A at Anchorage. However, since that channel is no longer needed as a substitute, it is not necessary to address the opposition comments at this time.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC 43 (Sub-12)]

Leasing Rules Modifications

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: Part 1057 of the Commission's regulations sets forth general leasing requirements by which a carrier with ICC authority may perform authorized transportation utilizing equipment it does not own. A major requirement is that a lease of equipment between the equipment owner-lessor and the authorized carrier-lessee be for a minimum period of 30 days. By this notice, the Commission adopts final rules modifying the existing trip-leasing exemption which will allow private carriers to trip-lease their equipment and drivers to authorized carriers.

EFFECTIVE DATE: These rules will be effective on December 30, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Rothstein (202) 275–7912

or

Mary Kelly (202) 275–7292

SUPPLEMENTARY INFORMATION: Part 1057 of the Commission's regulations [49 CFR Part 1057] sets forth general leasing requirements by which a carrier with ICC authority may perform authorized transportation utilizing equipment it does not own.[1] A major requirement is that a lease of equipment between the equipment owner-lessor and the authorized carrier-lessee be for a minimum period of 30 days.[2] An exemption from this requirement is made for authorized carriers, which may trip-lease to other authorized carriers equipment owned by them or held by them under a lease of 30 days or more.[3] A private carrier cannot, by definition, use this exemption, as it is not

[1] 49 CFR 1057.11.

[2] 49 CFR 1057.12(c).

[3] 49 CFR 1057.22.

authorized to transport property as either a common or contract carrier.[4] Private carriers are now permitted to lease their equipment to authorized carriers, but leases must be for minimum periods of 30 days, as set forth in the general leasing regulations.

This proceeding was instituted by a petition filed November 17, 1980, by the Private Carrier Conference, Inc. (PCC), of the American Trucking Associations, Inc. In proposed rules published in the Federal Register on March 5, 1981,[5] we recognized recent statutory and administrative developments which grant added operating flexibility for private truck fleet operators. We proposed (a) to modify the trip-leasing exemption to permit private carriers to trip-lease their equipment to regulated carriers, and (b) to delete paragraphs (c) and (d) from the trip-lease exemption.[6]

Comments

The Commission received 87 comments, representing approximately 100 parties.[7] Persons filing comments fall into three general categories. There are 58 comments from manufacturers and shippers, the vast majority of which engage in private carriage operations. With one exception, all commenting parties in this group endorse private carrier trip-leasing, with most also specifically approving the proposed deletions from the trip-leasing regulation. Comments were received on behalf of 16 authorized carriers, all of which, save for Ryder System, Inc., oppose the proposal. Lastly, 20 associations, trade groups, and the United States Department of Transportation (DOT) responded. Generally, associations representing shipper interests favor the proposal, while those representing the regulated motor carrier industry are opposed. DOT supports our proposals.

In light of recent legislative changes and changes that have occurred in the motor carrier industry, we conclude it is appropriate to amend the Commission's present rules which preclude private carriers from engaging in the practice, now accorded only to authorized carriers, of trip-leasing their equipment and drivers to authorized carriers. This distinction no longer serves a valid regulatory purpose. Further, it is inconsistent with the provisions of the Motor Carrier Act of 1980 and the National Transportation Policy.

We are confident that our rule modification is in accord with existing statutory requirements. We do not expect any shift in the relative positions of private and for-hire carriers in the overall transportation arena, nor do we expect any deterioration in service, business opportunities, or viability on the part of either class of carrier. Nevertheless, we intend to monitor the practical effects of these changes on the regulated sector, private carriers, and the shipping public, on a continuing basis. If actual operations under the amended rules disclose effects that are contrary to the public interest or the National Transportation Policy, we are prepared to make further changes in our rules.

Preliminary matters

Various comments are directed more toward the Commission's procedures than to the substantive merits of our proposal. These parties claim, first, that we have no authority to entertain rules which purport to regulate private carriage; second, that oral argument should be heard in this proceeding; third, that our notice evidences a prejudgment of the issues involved; and fourth, that the Commission, by a decision of its Motor Carrier Leasing Board, erroneously sanctioned the relief sought by petitioner for a single private carrier. Save for the last contention, we find no merit in these claims.

1. *Lack of jurisdiction*—The Common Carrier Conference—Irregular Route (CCC–IR) asserts that the Commission is without authority to take any action which benefits an entity or class not subject to its economic regulation. It insists that we may not promulgate rules which benefit private carriers to the detriment of for-hire carriers. We recognize that the Commission has no power to regulate transportation of property by motor vehicle which meets the definition of the "primary business test".[8] That the Commission has plenary authority, however, to prescribe regulations governing the leasing of motor vehicles *by regulated carriers* is without question, and has been upheld in *American Trucking Associations, Inc.* v. *United States*, 344 U.S. 298 (1953). The Court there noted that although the Motor Carrier Act of 1935 did not specifically authorize the Commission to control vehicle leasing practices, the Commission possessed sufficient rulemaking authority to promulgate rules governing such practices by carriers subject to its jurisdiction.

Our trip-leasing regulation does not regulate motor carriers per se, but only explicates the form and content of the lease arrangement negotiated by carriers which are subject to our jurisdiction and which desire to augment their equipment fleets with equipment and drivers obtained from other authorized carriers.[9] Our proposed rule prescribes precisely the same requirements where the source is a private carrier as opposed to an authorized carrier, and is merely an extension of our general authority to govern the leasing practices of authorized carriers. It does not impose economic regulation upon entities outside the scope of the Commission's jurisdiction. Nothing in the terms of the 1980 Act or its legislative history circumscribes our powers to regulate leasing practices under 49 U.S.C 11107, or prohibits our reassessment, in light of recent statutory and economic changes, of the distinction contained in the trip-leasing exemption by the exclusion of private carriers.

Several parties are united in their belief that the term "motor carrier" in the National Transportation Policy by definition excludes private carriers, and that the beneficial goals sought to be attained by Congress are inapplicable to them.[10] Daily Express states that Congress, if it intended to promote private carriage, would have produced clear signals to that effect when it considered the Motor Carrier Act of 1980. Others argue that Congress intended to legislate in favor of private carriers only to the extent that it sanctioned compensated intercorporate

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[4] 49 CFR 1057.2(a); this assumes the private carrier does not possess operating authority acquired pursuant to the Commission's decision in *Toto Purchasing and Supply Co., Inc.*, 128 M.C.C. 873 (1978). As used in this decision, the term "private carrier" may be read to mean "shipper".

[5] 46 FR 15300.

[6] *Id.*

[7] See Appendix A.

[8] See 49 U.S.C. 10524(a), which codified the test announced in *Lenoir Chair Co. Contract Carrier Application*, 51 M.C.C. 65 (1949). See *Brooks Transp. Co. v. United States*, 43 F. Supp. 517 (E.D. Va 1950), *aff'd*, 340 U.S. 940 (1951).

[9] 49 U.S.C. 10922(f)(3) states that the Commission may not prescribe a condition preventing a motor common carrier from augmenting its equipment, facilities, or transportation within the scope of its certificate to satisfy business development and public demand. See also 49 U.S.C. 11107(a), specifying the minimum contents of any lease by an authorized carrier.

[10] 49 U.S.C. 10102(11) defines "motor carrier" as a motor common carrier and motor contract carrier. The former, latter, and motor private carrier, are individually defined at subparagraphs 12, 13, and 14, respectively. CCC–IR asserts this proceeding disregards prior Commission interpretations of the Interstate Commerce Act, in contravention of *United States* v. *Drum*, 368 U.S. 370 (1962). Although *Drum* dealt generally with private carriage, the precise question there concerned transportation burdens which must be assumed by private carrier leasing equipment and drivers from a single source in order to exempt its proprietary transportation from Commission regulation. See 49 U.S.C. 10524(a). This proceeding involves the propriety of adding another class of equipment operators to that class which now may lease equipment for less than 30 days, under prescribed guidelines, to carriers already subject to Commission jurisdiction. The issue in *Drum* is dissimilar to that under review here, and CCC–IR itself concedes its argument is only tangentially related to this proceeding. No further attention will be given to this claim.

hauling (CIH) [section 9, codified at 49 U.S.C. 10524(b)].

These arguments are unconvincing. Congress, in enacting the Motor Carrier Act of 1980, considered and resolved a number of difficult issues affecting the relationship between private and for-hire carriage. While Congress made no pertinent definitional changes in the Act, it also did not undertake to write the Commission's past interpretations into the statute itself.[11] The mere fact that Congress could have specifically legislated to include this proposal cannot be considered a conclusive determination to preclude this type of relief. As long as our ultimate determination is consistent with law, the conclusion we draw is that Congress continues to rely on the Commission, as it has in the past, to judiciously implement its dictates in a reasonable exercise of our discretionary authority. It is well settled, particularly in the area of motor carrier leasing regulations, that the Commission has authority to issue regulations not expressly authorized by a particularized grant of statutory authority, so long as such regulations are reasonably related to the purposes of The Act. *American Trucking Assn's.* v. *United States*, 344 U.S. 298, 309–10 (1953); *Global Van Lines* v. *ICC*, 627 F. 2d 546, 550–51 (D.C. Cir. 1980).

2. *Request for oral hearing.*—Billings Transfer Corp., Inc., and the International Brotherhood of Teamsters are representative of several carriers and organizations which request an oral hearing on the proposed modifications because of their allegedly far-reaching consequences. An oral hearing is not required by statute. A decision on whether to hold an oral hearing is left to agency discretion under section 553(c) of the Administrative Procedure Act. We conclude that all relevant issues have been properly and adequately addressed by the submission of written arguments by interested parties, and thus consider an oral hearing unnecessary.

3. *Purported Prejudice.*—Daily Express argues, and the CCC–IR asserts, by way of a footnote, that we have already reached a decision in this matter and have placed upon persons filing comments the burden of dissuasion. This argument misconceives the nature of the informal notice-and-comment rulemaking process. Our preliminary review of the subject area satisfied us that some general reevaluation of our trip leasing exemption was warranted in light of recent statutory changes, Commission decisions, and the enormous growth of private carriage in recent years. We had doubts about the continued validity of distinctions which have been employed through the years and have had the effect of foreclosing opportunities for private carriers to profitably backhaul, efficiently utilize, and effectively reposition their equipment. We have given full notice of our proposal, have received comments, and following examination of the comments, are announcing the new rules to be effective 30 days after publication of this decision as required by section 553 of the APA. We are satisfied that we have complied fully with all applicable requirements for notice-and-comment rulemaking. See *American Bus Ass'n v. United States*, 627 F. 2d 525 (D.C. Cir. 1980).

4. *Decision of the Motor Carrier Leasing Board.*—In its comments, the American Trucking Associations, Inc. (ATA), petitions for a stay and reconsideration of a Motor Carrier Leasing Board decision in Ex Parte No. MC–43, served April 10, 1981, granting a waiver of 49 CFR 1057.12(c) to M&L Truck Line, Inc., a wholly-owned subsidiary of Memphis Furniture Manufacturing Co. (MFMC), a company engaged in private carriage. ATA states that the Board's action effectively authorizes, for an individual carrier, the trip-leasing of private carriage equipment to regulated carriers, the relief sought by petitioner.[12] It argues that such action in light of the pending nature of this proceeding is beyond the Board's authority and unsupported by the leasing regulations.

Under the existing leasing regulations, equipment may be trip-leased only between authorized carriers (§ 1057.22), with exceptions not here pertinent. In this case, only one party is an authorized carrier. The purpose of the sought waiver was to comport with the National Transportation Policy's provisions concerning efficiency and productivity, as well as to eliminate MFMC's deadhead return mileage and achieve maximum energy efficiency and environmental preservation. The modified rules adopted here will accord to all private carriers the trip-leasing opportunities now enjoyed by MFMC and authorized carriers. In view of our action, then, ATA's petition for reconsideration is denied.

Development of the Trip-Lease Exemption

1. *Leasing practices generally.*—Prior to the Motor Carrier Act of 1935, motor carriers regularly performed authorized operations in non-owned vehicles. To a large extent, ownership of these vehicles was vested in the persons who drove them, commonly referred to as owner-operators. Carriers used non-owned vehicles pursuant to both oral and written contracts covering single point-to-point hauls, as well as round-trip hauls. The former arrangements are referred to as trip leased, while both types of arrangements are embraced in the term "leasing".

Carriers' leasing practices created administrative problems from the inception of regulation, particularly with respect to determining whether the leased vehicles and drivers were under sufficient control of the lessee certificate holder so as to preclude a conclusion that the lessor was actually performing the transportation service. Beginning with *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M.C.C. 735, 737–741 (1939), the Commission applied the test that authorized carriers could use non-owned vehicles to perform their authorized operations only if the vehicles were under a carrier's direction and control, whether or not the driver was an employee. There were a number of subsequent cases considering various motor carrier operations conducted in non-owned vehicles.[13] It was later determined that when a certificate holder furnished service in vehicles owned and operated by others, it had to control the service to the same extent as if it owned the vehicles, but it need control the vehicles only to the extent necessary to be responsible to the shipper, the public, and the Commission.[14]

2. *Adoption of Leasing Rules.* In 1950, Division 5 of the Commission issued a report on an investigation concerning the lawfulness of the practices of motor common and contract carriers in the leasing and interchange of vehicles.[15] A major issue in that report was the extent of the Commission's authority to regulate the leasing practices of carriers.[16] Another important issue was

[11] Compare the 1958 amendment to the definition of private carriage, which was expressly designed to write into the statute the Commission's "primary business" test announced in the *Lenoir Chair* case. *Supra*, f.n. 8.

[12] The petition was received at the Commission nine days after the PCC's petition was filed, and a decision was served 36 days after this proceeding was noticed in the Federal Register.

[13] See *Lease and Interchange of Vehicles by Motor Carriers*, 51 M.C.C. 461, 465 (1950).

[14] 57 M.C.C. at 681.

[15] *Lease and Interchange of Vehicles by Motor Carriers, supra*, n. 13.

[16] The Commission's report also dealt with interchange of vehicles. As we are here concerned only with leasing, references to interchange have been deleted.

whether the hiring of vehicles, with or without drivers, must be under long term leases. The evidence consisted generally of improper or unsafe conditions reported by the Bureau of Motor Carrier's field staff in its 1948 informal investigation of leasing practices. These conditions, such as false driver logs and equipment disrepair, indicated insufficient control by carriers over drivers, and over the operation in general.

The report and the initial leasing rules adopted by Division 5 to remedy substandard leasing practices were based largely on evidence pertaining to the relationship between independent owner-operators and certificate holders. There was no substantive consideration given to private carriers. In concluding that the then-existing safety rules should be strengthened by imposing control requirements on users of leased equipment,[17] Division 5 stated that the greatest threat to observance of the safety regulations [18] occurred in the leasing by authorized carriers of owner-operators on the single-trip basis, where the lessees did not have sufficient time to properly verify equipment and drivers. In view of this concern, a provision was included in the newly adopted leasing rules to require a minimum period of 30 days for parties who wished to execute an equipment and driver lease arrangement.

In theory, the 30-day time period would give the carrier a sufficient opportunity to verify the owner-operator's credentials, competence, and physical ability, and to examine his equipment properly. It must be emphasized that the leasing regulations precluded only owner-operators from engaging in trip-leasing. In permitting trip-leasing between authorized carriers, the Commission was certain that the economic and safety regulatory scheme would not be circumvented because the burdens of compliance were imposed on parties already subject to its jurisdiction. An authorized carrier's lessor under a 30 day minimum lease would be inspected and qualified as safe and competent. The authorized carrier could then trip-lease its lessor to another authorized carrier for a period of less than 30 days. The sub-lessee carrier would perform essentially the same checks as the prime carrier, and would be required to assume possession of, control over, and responsibility for the leased equipment for the term of the trip-lease.[19] For a lease of less than 30 days, then, even though the sub-lessee carrier would be primarily liable, there would always be a responsible party, subject to agency jurisdiction, to vouch for the owner-operator's competence and fitness, assume any gaps in liability, and answer to violations of Federal Regulation.

Administrative and Legislative Development

The Commission first considered this issue in 1974 when it published a notice of proposed rulemaking in Ex Parte No. MC–43 (Sub-No. 3), *Lease to Regulated Motor Carriers of Vehicles With Drivers to Private Carriers*, 39 FR 9554 (March 12, 1974). That proceeding was instituted in light of the then-existing national energy emergency. In deference to the trip-lease exemption's requirements that both lessor and lessee possess authority from the Commission, the proposal sought to maintain a level of control over trip-leasing comparable to that applicable between for-hire carriers. In a decision served May 25, 1976, the Commisison terminated the proceeding, stating that neither the comments submitted nor the Commission's own resources provided an adequate basis for making an informed decision on the merits of the proposal.

Private carriers were given the opportunity to operate more efficiently and profitably in *Toto Purchasing & Supply Co., Inc.*[20] In that decision, the Commission, rejecting a longstanding policy, decided to allow private carriers to apply for and receive for-hire motor carrier operating authority complementary to private carriage movements.[21] The Commission expected that implementation of the new policy would enable private carriers to provide for increased efficiency in the transportation system by filling up otherwise empty backhauls. The beneficial impact of the *Toto* decision has been lessened, however, because of the securities approval requirements which attach to the possession of operating authority. In fact, private carriers are reluctant to take advantage of the *Toto* policy. They do not wish to subject their securities issuances to ICC scrutiny, particularly where those issuances may be largely unrelated to matters under ICC jurisdiction.[22]

We recognize that the Bus Regulatory Reform Act of 1982 should eliminate this obstacle to full utilization of *Toto* authority. Section 19(a) of the Act repeals 49 U.S.C. 11343 and renders motor carrier securities subject only to the jurisdiction of the Securities and Exchange Commission. See Cong. Rec. H 6680, H 6689 (daily ed. Aug. 19, 1982); S. Rep. No. 97–411, 97th Cong. 2d Sess. 30 (May 20, 1982). The actual extent to which this statutory change will stimulate *Toto* activities by private carriers remains to be seen. Moreover, we are convinced that the leasing-rule changes being considered here are independently advisable, because of the likely benefits to overall efficiency of private carriers and regulated carriers alike.

Congressional recognition of and relief from the special and sometimes burdensome operating conditions under which private carriers operate is contained in Section 9 of the Motor Carrier Act of 1980.[23] This section amended 49 U.S.C. 10524 by adding a provision allowing intercorporate hauling for compensation. In implementing this section, we observed that an existing corporate affiliate may provide intercorporate transportation services to all participating affiliates, and that a separate wholly-owned entity may be incorporated to provide the transportation.[24] The exemption from Commission jurisdiction of this narrowly circumscribed form of for-hire motor carriage marks a departure from previous Commission policy, which had required intercorporate hauling to be performed without compensation, and resulted in operational inefficiencies for corporate families, preventing them from maximizing their transportation capacity. See *Schenley* v. *United States*,

[17] 51 M.C.C. at 523; the relationship was viewed as owner-operator/carrier. No consideration was seriously paid to the safety records of other sources of equipment leasing, such as commercial lessors.

[18] It should be noted that in 1967 jurisdiction over motor vehicle safety was transferred from the Commission to the Department of Transportation.

[19] 49 CFR 1057.12(d) for 30 day leases; § 1057.22(e)(2) for leases less than 30 days in duration.

[20] 128 M.C.C. 873 (1978), affirmed in Ex Parte No. MC–118, *Grant of Motor Carrier Operating Authority to an Applicant Who Intends to Use It Primarily as an Incident to the Carriage of Its Own Goods and Its Own Non-Transportation Business*, 43 FR 55051 (1978).

[21] Applicants must meet the criteria for common or contract carriers, and must agree to conduct their "for-hire" transporation activities independently of their private transportaion and other activities.

[22] In concluding that the Commission lacked the authority to administratively exempt *Toto* carriers from the statutory prescribed securities regulations, the decision contained a recommendation to Congress that, along with reconsideration of the Commission's general jurisdiction over authorized carriers' securities, particular consideration to be given to exempting *Toto* carriers from existing requirements. See Ex Parte No. MC–118 (Sub-No. 1), *Proposed Policy Statement Concerning Jurisdiction Over Securities Issuances for Companies Obtaining Authority Under MC-118*, 45 FR 2406 (January 10, 1980).

[23] P.L. 96–296, 94 Stat. 793.

[24] Ex Parte No. MC–122 (Sub-No. 1), *Implementation of Intercorporate Hauling Reform Legislation*, 45 FR 86766 (December 31, 1980), affirmed in *American Trucking Associations* v. *ICC*, No. 81–7092 (11th Cir., Decided April 8, 1982).

326 U.S. 432 (1946). Petitioner (PCC) points out, however, that many private carriers will be unable to avail themselves of the relief accorded in Section 9 because they have no qualifying affiliate for which freight could be transported. Intercorporate hauling, like *Toto*, it claims, will remain another, but nonviable, option for private carriers in the quest for energy conservation.

Discussion and Conclusions

Our evaluation of the evidence in this proceeding, as well as consideration of recent legislative and regulatory changes, convinces us that private carriers should be allowed to trip-lease their equipment to regulated carriers. What is at issue here is the ability of private carriers, like regulated carriers, to improve their overall efficiency by trip-leasing their equipment and drivers to authorized carriers in order to reduce empty miles. By amending our trip-leasing exemption as proposed, we will permit an additional avenue of equipment utilization and revenue production for private carriers while at the same time promoting the National Transportation Policy by allowing the most productive use of equipment and energy resources.

The exception to the 30 day minimum lease period, permitting trip-leasing between authorized carriers, was adopted because of evidence that owner-operator equipment, leased on a trip-basis, encroached adversely on the public safety. There was never any serious consideration given to the safety record of private carriers, but private carriage was then hardly considered a major factor in the motor carrier industry.[25] Private carriers were and are subject to Federal safety regulations,[26] yet the report which ultimately led to the adoption of the leasing regulations brought little to bear on the safety records of private carriers. The trip-leasing exemption, then, was drafted in accordance with the information obtained by the Bureau of Motor Carriers, and only authorized carriers were permitted to trip-lease. There is no evidence which demonstrates that private carriers were purposely excluded when the exemption was drafted. The report's failure to assess the safety record of private carriers, then, cannot justify their further exclusion in reviewing the continued applicability of the trip-lease exemption.

The recent enactment of the Motor Carrier Act of 1980 makes it particularly appropriate to reappraise our regulations [27] as they pertain to private carriers. The 1980 Act reveals that Congress is much less concerned than it formerly was over the possibility of traffic diversion from existing regulated carriers. See 49 U.S.C. 10922(b)(2)(B). This was a policy adopted in order to achieve an earlier regulatory objective of maintaining a stable traffic base for a relatively limited number of carriers, an objective now subordinated by Congress in favor of heightened competition. We think that this fact may be considered in reappraising our rules.

The 1980 Act gives evidence that Congress recognizes private carriers as a legitimate branch of the overall trucking industry. Thus, in the interests of the private carriage industry, Congress carved out from the Commission's jurisdiction compensated intercorporate hauling. While this provision does not directly affect the matter under consideration, it does demonstrate on the part of Congress a recognition of this branch of the trucking industry and a disposition to make provisions for it. In light of this provision and the accompanying explanation,[28] reevaluation of our existing trip-lease regulation is timely so that private carriers which lack qualifying affiliates for intercorporate hauling can nevertheless operate more efficiently than they otherwise could.

We also cannot overlook the obvious efficiency benefits to the regulated carriers. By making private carriers available as a source of leased equipment, the new rules should allow the regulated carriers to match their equipment to the demand for their service more flexibly and more economically. Moreover, making this new source of leased equipment available should stimulate competition in the supply of such equipment, fostering efficient access by regulated carriers to needed short-term equipment.

It is true that the Commission's decision in *Toto* similarly sought to reduce unnecessary empty backhaul mileage for private carriers. The success and usefulness of that decision, as previously noted, extends only to those private carriers willing to comply with the Commission's securities provisions. The practical effect is that shippers which choose not to seek supplemental operating authority under *Toto* are penalized for their choice; they are precluded from operating as efficiently as can for-hire carriers. C&H contends that private carriers which choose not to acquire operating authority are seeking to avoid ICC scrutiny of their securities issuances, so that administrative relief for their operating plight is unwarranted in light of their motives. The issue of such administrative relief has been rendered moot by the repeal of the Commission's statutory jurisdiction over motor carrier securities, noted *supra*. We believe, however, that additional efficiency and competitive benefits to both private and regulated carriers are likely to result from the leasing-rule changes we adopt here.

Finally, the problems experienced by private carriers in attempting to operate more efficiently are continuing and worsening. In an independent study,[29] the Commission found that private carriers have one of the highest ratios of empty mileage in the carrier industry. In view of the fact that private carriers outnumber regulated carriers by a ratio of 9 to 1,[30] significant energy and operating efficiencies could be achieved by allowing private carriers to trip-lease as proposed.

Parties in opposition to our proposal raise several other issues. They argue that this changed rule will effectively circumvent statutory provisions designed to protect the integrity and confidentiality of certain shipping information. Title 49, U.S.C. 11910(a)(2) provides generally that an authorized carrier may not knowingly disclose certain information contained in shipping documents when that information may be used to the detriment of the shipper/consignee. Certain parties maintain that shipping information will be divulged in violation of this section where a private carrier, trip-leased to an authorized carrier, is

[25] Although we are sensitive to arguments that trip-leases with privately-owned corporate equipment will somehow result in a diminished level of safety among vehicles operating over the nation's highways, no party has convincingly demonstrated how highway safety will be compromised. A contrary conclusion conflicts with the explanation that accompanied the agricultural exemption, 64 M.C.C. 361, that business entities maintain high safety standards in the operation of vehicles for their nontransportation related business.

[26] *United States* v. *Rossetti Brothers, Inc.*, No. 81-1202 (2d Cir. February 3, 1982). Contrary decisions, including *United States* v. *RSR Corporation*, 664 F. 2d 1249 (former 5th Cir. 1982), are being appealed by the Federal Highway Administration.

[27] *See American Trucking Assn's v. United States*, 344 U.S (1953), upholding the Commission's right to adopt leasing regulations.

[28] The House Committee's Report, at page 22, concluded its explanation of compensated intercorporate hauling and stated "It is anticipated that this section will contribute towards reducing empty backhauls and, thus, contribute to further energy conservation."

[29] *Empty/Loaded Truck Miles on Interstate Highways During 1976*, Interstate Commerce Commission, Bureau of Economics and Bureau of Operations, April, 1977.

[30] See U.S. General Accounting Office, "Issues in Regulating Interstate Motor Carriers", (June 20, 1978) at 13.

dispatched to the loading dock of the former's competitor.

When equipment is leased by a carrier for periods of less than 30 days, our regulations require that documents covering each trip made under lease, including origin, destination, and identification of the lading, be kept by the lessee carrier and carried in the vehicle.[31] However, the fact that shipping information may be viewed by one other than the shipper does not in and of itself give rise to a violation of the non-disclosure provision. The Commission's leasing regulations now permit a private carrier to lease equipment and drivers to authorized carriers for 30 days or more. Although documents covering leases for periods of 30 days or more may be kept at the authorized carrier's terminals or principal office, given the general nature of the information contained in these documents, there is an equal or even far greater opportunity for disclosure during a thirty day lease period than there is during a trip-lease lasting only one day. However, we are not aware of any improper disclosures in either 30 day leases by private carriers or trip leases by authorized carriers, and none has been pointed out to us.

Moreover, we are reasonably certain that the relatively standard information that is contained in shipping documents would be of little or no value to a competitor who may receive it. Of the shipper associations and shippers that filed comments, none expressed any apprehension in disclosing the information required in shipping documents. Many of these supplement their proprietary trucking operations with common or contract carriage, and their use of the latter requires them to divulge strategic information in shipping documents. Their collective failure to register concern over the possible misuse of such information supports the conclusion that they have acquiesced in the need for any attendant risks accompanying disclosure. We think this is one of the strongest rebuttals to the opponents' fears.

Certain parties argue that the economic leverage of large shippers, operating their own private fleets, may be great enough to coerce an authorized carrier into trip-leasing shippers' equipment. A shipper assertedly could threaten to divert its non-private carriage traffic from an authorized carrier unless that carrier utilizes the shipper's private vehicle on a trip-lease. Such conduct arguably violates 49 U.S.C. 10741.[32] In a similar vein, certain parties speculate that coercive backhauling arrangements will invite violation of 49 U.S.C. 10761.[33]

We are unwilling to assume that a common carrier's choice of which type of leased equipment it will utilize, even where the choice may benefit a private carrier, automatically results in discriminatory treatment among several shippers in violation of Sec. 10741. Likewise there is no evidence to suggest that the use of a private carrier's vehicle will alter the amount otherwise charged or received by the authorized carrier in violation of Sec. 10761. No such discrimination, favoritism, or preferential treatment is known in private carrier leases of 30 days or more, and we have no reason to assume such abuse will prevail if private carriers are allowed to trip-lease their equipment. We must deal with real, rather than theoretical possibilities in determining when to act to shield the public from discriminatory practices. We would naturally expect that some private carriers with recurring, patterned movements will arrange to have their equipment trip-leased to authorized carriers, especially where these carriers have recurring movements to the lessor's equipment origin. There is nothing to suggest that such arrangements would be anything other than one of convenience for both parties, and there is no evidence that such arrangements would constitute coercion or statutory violations.

The Commission has in place several procedures to ensure that abuses arising from coercive practices do not occur. We are ready and willing in the future, as we have been in the past, to investigate any shipper's attempt to encourage unduly an authorized carrier to trip-lease the former's equipment, or to penalize a carrier for not trip-leasing its equipment. We are not convinced, however, that such coercion is a standard pattern of shipper behavior which need be addressed here.

Smith's Transfer Corporation contends that adoption of this proposal will ultimately cause deteriorating service to small shippers which must rely on authorized carriers for their transportation needs. It forecasts that common carriers, intending to rely on equipment trip-leased from companies engaged in proprietary operations, will disinvest in owned equipment. It states that such action would seriously impair their ability to provide service to the public and to otherwise comply with their common carrier obligations. The implication is that service provided in non-owned equipment will somehow be inferior in quality and reliability. These arguments are without support, and the implications that arise are purely speculative. Authorized carriers are now permitted to perform transportation in non-owned equipment, e.g., from other authorized carriers, yet this does not impair their ability to provide required levels of service. Even if carriers disinvest in owned equipment and utilize equipment and drivers leased from private carriers, inability to provide a proper and consistent level of service does not follow. Information found in Trinc's Blue Book of the Trucking Industry reveals that there are many authorized carriers, specializing in all types of carriage, which perform transportation solely or primarily through the use of leased equipment. It cannot be seriously argued that these carriers are unable to provide responsive service. Nor have we been convinced that the performance of authorized transportation in non-owned vehicles will lead to a deterioration of service to the carrier, shipper, or the public.

The Specialized Carrier Conference argues that our proceeding in Ex Parte No. MC–122 (Sub-No. 2), *Leasing of Equipment and Drivers to Private Carriers*,[34] will combine with the instant one, allowing private carriers to engage in a revolving-door operation of leasing owner-operators for themselves on a 30-day basis and then trip-leasing them out to authorized carriers when they are underutilized, essentially assuming the role of a truck broker. We are not convinced that this juggling of equipment between private and for-hire carriers will in fact occur. We have discussed the special problems facing shippers which operate their own vehicles. Many of them seek to reap the service benefits available from the operation of private vehicles and no more, because private carriage operations create a drain on both managerial talent and financial resources. That drain, in terms of the shippers primary (non-transportation)

[31] 49 CFR 1057.11(d)(1).

[32] This section prohibits a common carrier from charging or receiving a different compensation for a service rendered than it charges or receives from another person when performing a like and contemporaneous service in the transportation of like traffic under substantially similar circumstances.

[33] This section generally prohibits an authorized carrier from charging different compensation for transportation than the rate specified in the tariff or from performing transportation without a published tariff in effect.

[34] 132 M.C.C. 756 (1982); 47 FR 7885 (February 23, 1982). The effective date has been stayed pending judicial review by an order of the Eleventh Circuit Court of Appeals on March 25, 1982 (Nos. 82–5247 and 82–8133).

business, could only be compounded by the abuse of these proceedings. Given the pending nature of Ex Parte No. MC–122 (Sub-No. 2) in the Eleventh Circuit Court of Appeals and the nature and purpose of proprietary trucking operations, we think SCC's fears are premature and unfounded.

The National Automobile Transporters Association and others contend, without elaboration, that the modifications proposed here are a form of master licensing prohibited by the Motor Carrier Act of 1980.[35] This comment misunderstands the nature of the proposed rules. The master licensing prohibition is designed to prevent the Commission from announcing, in a rulemaking proceeding, general findings of public convenience and necessity. The statutory ban, however, is expressly limited to motor carrier licensing proceedings. Our proposal here neither involves a licensing proceeding nor makes any findings of public convenience and necessity. The amended rules will not enfranchise private carriers with operating authority; rather, they will allow for-hire carriers to acquire equipment and drivers for trip-leases from a source other than those which presently exist. The ban on master licensing cannot be interpreted as a sweeping prohibition foreclosing our traditional and specific authority to promulgate rules in this area.

Several parties oppose our proposed deletion of paragraphs (c) and (d) of 49 CFR 1057.22. Floyd and Beasley argues that deleting (c) would be tantamount to eliminating the 30-day minimum lease requirement because of the potential for so-called back-to-back trip-leasing (consecutive trip-leasing with authorized carriers without an intervening private carriage movement). The ATA believes that the deletion would promote unlawful evasion of regulation. Neither argument compels us to retain the rule. Authorized carriers may now engage in back-to-back trip-leases to some degree, provided the other requirements of trip-leasing are met. Paragraph (c) requires the lessor carrier to "regularly use" the equipment in its authorized service, but our research has found no decision interpreting that language, and its inclusion adds little to generally accepted motor carrier operating practices. As noticed in the proposal, its inclusion tends to frustrate the efficient movement of goods in a manner inconsistent with the national transportation policy.

As to private carriers, a "regular use" restriction would be meaningless, because such a carrier normally has no Commission-authorized service. Moreover, the positioning flexibility and efficient matching of equipment to demand will be promoted by avoiding any such restriction on private and regulated carriers.

With respect to this issue, Smith's Transfer urges that we impose specific restrictions to preclude private carriers from engaging in "back-to-back" trip leasing. The suggested restriction is similar to one that now applies to agricultural carriers.[36] We think such a restriction is unnecessary. A private carrier is effectively the alter ego of the shipper. Generally, proprietary carriage operations have been instituted on behalf of and for the exclusive use of the shipper to aid in the distribution of goods or acquisition of materials. The private carrier's highest allegiance and loyalty is owed to the shipper for which it operates. It does not often have lengthy periods of time in which control, possession, and use of its equipment can be relinquished to authorized carriers. It is by definition not engaged in the primary business of transportation; it seeks only an effective distribution medium.

In view of this, there are strong motivations for a company to engage in the least additional amount of trip-lease transportation as possible, particularly because such transportation utilizes its equipment but operates outside of its control. We find nothing to suggest that back-to-back trip-leasing will be used to engage in some clandestine form of for-hire transportation. We think that if private carriers do engage in consecutive trip-leasing, it will be done to complement the shipper's distribution requirements, to satisfy equipment repositioning needs, or to accord with other normal business dictates.

The proposed removal of paragraph (d), which requires trip-leased equipment to travel in the direction of lessor's authorized service point, is viewed by some as inimical to the National Transportation Policy. The ATA states that a poll of its members indicates that the more a carrier deviates from the normal flow of its operations between authorized service points, the less chance it has of securing a return load. Although some trip-leases may terminate without a readily available return load, elimination of this section will, on the other hand, provide opportunities for creative experimentation with productive equipment repositioning. Regulated carriers should benefit from the greater latitude and flexibility afforded them in acquiring and utilizing leased equipment. As to private carriers, the existing rule would have no meaning because they are not engaged in performing "authorized" service in any particular "direction". We believe that any directional requirement is directly at odds with the efficient matching of equipment to demand, whether the lease transaction involves regulated or private carriers.

Finally DOT and the Standard Oil Company (Ohio), concurring with our proposed rules, ask us to permit the trip-leasing of private carriers to other private carriers where the freight requires specialized equipment or for other reasons is rarely moved by regulated carriers. This request involves transactions solely between private carriers. As such, it is a matter beyond the jurisdiction of this agency to regulate.

Environmental and Energy Considerations

We adopt our preliminary finding in our notice of proposed rulemaking that this action will not have any significant impact on the quality of the human environment or conservation of energy resources. No comments have been submitted on any matter indicating that a contrary position is warranted. We reaffirm our position that this rule change will improve operating efficiency.

Regulatory Flexibility Analysis

The rules modifications adopted here will confer a significant, beneficial economic impact upon private carriers by allowing more efficient equipment utilization. In addition, for-hire carriers can augment their equipment fleets with that leased from private carriers, thus offering improved service and acquiring the same ability to avoid high-cost one-way hauls. These carrier benefits should have a public impact in the form of improved service and lower rates. In sum, the rules modifications address the congressionally mandated concern of efficient and productive utilization of equipment and energy resources.

List of Subjects in 49 CFR Part 1057

Motor carriers, Leasing requirements, Leasing requirements exemptions, Private carriers.

Adoption of Rules

Accordingly, we adopt the revisions to Title 49, Part 1057, of the Code of Federal Regulations as described in *Appendix B* to this notice.

[35] Pub. L. 96–296, 94 Stat. 793, 5(b)(3) and 10(a)(6).

[36] 49 U.S.C. 10526; 49 CFR 1057.24; See *Florida Growers Cooperative*, 112 M.C.C. 138 (1970).

This action is taken under the authority of 49 U.S.C. 10321 and 10922(h) and 5 U.S.C. 553.

Decided: November 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

Appendix A

Parties Which Submitted Comments in Ex Parte No. MC 43 (Sub 12)

Shippers

1. Dayco Corporation, Dayton, OH
2. Walgreen Co., Deerfield, IL
3. Duro Paper Bag Manufacturing Co., Hudson, WI
4. Bigelow-Sanford, Inc., Greenville, SC
5. Wisconsin Beef Industries, Eau Claire, WI
6. World Carpets, Dalton, GA
7. House of Fabrics of S.C., Inc., Mauldin, SC
8. Rheem Air Conditioning Division, City Investing Co., Fort Smith, AR
9. Rockwell International Corporation, Pittsburgh, PA
10. Thomas Industries, Inc., Louisville, KY
11. Virco Manufacturing Corporation, Conway, AR
12. Homelite Division of Textron, Inc., Gastonia, NC
13. Verson Allsteel Press Company, Dallas, TX
14. The Ohio Art Company, Bryan, OH
15. PCA International, Inc., Matthews, NC
16. West Point—Pepperell, Inc., West Point, GA
17. The Drackett Products Company, Cincinnati, OH
18. Associated Grocers of Colorado, Inc., Denver, CO
19. Theisen Distributing, Inc., Dubuque, IA
20. Altas Powder Company, Dallas, TX
21. Blue Bell Services, Greensboro, NC
22. The Scott and Fetzer Company, Lakewood, OH
23. The Southland Corporation, Dallas, TX
24. Anchor Hocking Corporation, Lancaster, OH
25. Monsanto Company, St. Louis, MO
26. Nekoosa Papers, Inc., Port Edwards, WI
27. Southwire Company, Carrollton, GA
28. Petrolane, Long Beach, CA
29. Ameron Pipe Division Southwest, Phoenix, AZ
30. Dean Foods Company, Franklin Park, IL
31. Robbins, Inc., Cincinnati, OH
32. O'Neal Steel, Inc., Birmingham, AL
33. Standard Oil Company (Indiana), Chicago, IL
34. The Coca-Cola Company, Atlanta, GA
35. Donn Corporation, Westlake, OH
36. Hunt-Wesson Foods, Inc., Fullerton, CA
37. Keyes Fibre, Waterville, ME
38. Union Camp Corporation, Wayne, NJ
39. Green Bay Dressed Beef, Inc., Green bay, WI
40. Color Tile Supermart, Inc., Ft. Worth, TX
41. Georgia Pacific Corporation, Portland, OR
42. Boise Cascade Corporation, Boise, ID
43. Coastal Lumber Company, Weldon, NC
44. Midwestern Homes, Inc., Rapid City, SD
45. Foremost-McKesson, Inc., San Francisco, CA
46. McDonalds Corporation, Oak Brook, IL
47. Armour and Company
48. General Mills, Inc., Minneapolis, MN
49. Cargill, Incorporated
50. Dillard Paper Company, Greensboro, NC
51. Kroger Food Stores, Cincinnati, OH
52. The Standard Oil Company (Ohio), Cleveland, OH
53. Northern Telecom, Inc., Nashville, TN
54. The Pillsbury Company, Minneapolis, MN
55. Chandler Corporation, Boise, ID
56. Rig Hammers Inc., Westwego, LA
57. Century Mfg. Co., Minneapolis, MN
58. Combustion Engineering, Inc., Stamford, CT
59. Glenmore Distilleries, Louisville, KY

Carriers

1. Schwerman Trucking Co.
2. Midwest Emery Freight System, Belford Trucking Co., Inc., Little Audrey's Transportation Co., Inc., and Trans-Cold Express, Inc., (jointly)
3. Ryder System, Inc.
4. Watkins Motor Lines, Inc.
5. C&H Transportation Co., Inc., and J. H. Rose Truck Line, Inc. (jointly)
6. Dart Transit Company
7. Daily Express, Inc. and Samuel J. Lansberry, Inc. (jointly)
8. Smiths Transfer Corporation
9. Billings Transfer Corp., Inc., Bowman Transportation, Inc., and Floyd & Beasley Transfer Co., Inc. (jointly)

Associations, Individuals, and Other Commentors

1. Maxi-Cube Transport Systems, Inc.
2. National Industrial Traffic League
3. Indiana Farm Bureau Cooperative Association, Inc.
4. Private Truck Council of America, Inc.
5. National American Wholesale Grocery Association
6. Food Marketing Institute
7. United States Department of Transportation
8. Private Carrier Conference, Inc., of the American Trucking Associations, Inc.
9. Philip K. Davies
10. National Automobile Transporters Association
11. Steel Carriers Conference
12. Southern Hardwood Traffic Association
13. American Bakers Association
14. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
15. Specialized Carriers and Rigging Association
16. Truck Renting and Leasing Association
17. Common Carrier Conference—Irregular Route
18. Cooperative Food Distributors of America
19. American Trucking Associations, Inc., on its own behalf and on behalf of the following affiliated conferences: Regular Common Carrier Conference, American Movers Conference, Common Carrier Conference—Irregular Route, Local and Short Haul Carriers National Conference, National Tank Truck Carriers, Inc.
20. Seng Truck Leasing

Appendix B

PART 1057—[AMENDED]

1. Section 1057—22 of the Code of Federal Regulations, Title 49, is revised to read as follows:

§ 1057.22 Exemption for private carrier trip leasing and trip leasing between authorized carriers.

Regardless of the leasing regulations set forth in this part, an authorized carrier may lease equipment to or from another authorized carrier, or a private carrier may lease equipment to an authorized carrier under the following conditions:

(a) The identification of equipment requirements in § 1057.11 (c) must be complied with;

(b) The lessor must own the equipment or hold it under a lease of 30 days or more;

(c) There must be a written agreement between the authorized carriers or between the private carrier and authorized carrier, as the case may be, concerning the equipment as follows:

(1) It must be signed by the parties or their authorized representatives.

(2) It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under § 1057.11(b) is given to the lessor until: (i) Possession of the equipment is returned to the lessor and the receipt required under § 1057.11(b) is received by the authorized carrier; or (ii) in the event that the agreement is between authorized carriers, possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

(3) A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

2. Part 1057 of the Code of Federal Regulations, Title 49, is amended by the addition of the following section:

§ 1057.42 Lease of equipment by regulated carriers.

Authorized carriers may lease equipment and drivers from private carriers, for periods of less than 30 days,

in the manner set forth in 49 CFR 1057.22.

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49 CFR Parts 1245 and 1246

[No. 37025]

Revisions to the Preliminary Report of Number of Employees of Class I Railroads and the Reports of Employees, Service, and Compensation, Filed by Class I Railroads

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the monthly and annual report forms pertaining to the compensation, service hours, and number of Class I railroad employees. These revisions are being made to better reflect modern job classifications and make the reports more responsive to Commission data needs.

The monthly Report of Employees, Service, and Compensation is being significantly reduced and changed to a quarterly report. It will be entitled "Quarterly Report of Railroad Employees, Service, and Compensation." The Annual Report of Employees, Service, and Compensation is also being reduced and will be entitled "Annual Report of Railroad Employees, Service, and Compensation." The Preliminary Report of Number of Employees of Class I Railroads is being revised and will be entitled "Monthly Report of Number of Railroad Employees."

DATE: This action is to be effective for the reporting year beginning January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7448.

SUPPLEMENTARY INFORMATION: The Commission presently requires Class I railroads to file the Report of Employees, Service, and Compensation monthly and annually. The Commission uses data from these reports to annually publish Statement No. 300, Wage Statistics of Class I Railroads in the United States. These railroads are also required to file the Preliminary Report of Number of Employees of Class I Railroads on a monthly basis. The Commission uses this data to publish Statement No. 350, Report of Railroad Employment—Class I Railroads, on a monthly basis. The Commission also uses these reports in several functions such as (1) the application of the Rail Cost Update Procedure (a method used to update data derived from Rail Form A), (2) forecasting labor costs and measuring the efficiency of Class I Railroads, and (3) the Uniform Rail Costing System. The Commission is also legally required to supply the Railroad Retirement Board with this data.[1] Requiring these periodic reports is within the scope of 49 U.S.C. 10321.

On March 30, 1981, the Commission published a Notice of Proposed Rulemaking (NPR) requesting comments on proposed revisions to these reports (46 FR 19273). In that NPR the Commission proposed to: (1) revise the classification of job titles, (2) streamline the Annual Report of Employees, Service, and Compensation, and (3) streamline the Monthly Report of Employees, Service, and Compensation and combine it with the Preliminary Report of Number of Employees of Class I Railroads. These revisions were proposed to update the report forms, make them more responsive to Commission data needs, better reflect modern reporting divisions, and reduce reporting burden.

Review of Responses

The Commission received comments from The Railway Labor Executives' Association (RLEA), the Association of American Railroads (AAR), the Railroad Retirement Board (RRB), and the Bureau of Labor Statistics (BLS).

Both the AAR and the RLEA proposed changes to some job classification titles. The BLS proposed that the Commission revise the job classification titles in order to make them compatible with those in the Standard Occupational Classification (SOC) system.[2] The BLS argued that other agencies collecting occupational data are using the SOC.

The RRB stated that it needed the employment count listed in the Preliminary Report of Number of Employees of Class I Railroads on a monthly basis. The AAR argued that the Commission should continue to require this report because it is essential for evaluating the impact of strikes and seasonal fluctuations.

The RLEA objected to the elimination of the individual job classification titles from the Monthly Report of Employees, Service, and Compensation. The RLEA stated that it needs this information on a monthly basis for union wage negotiations. The RRB and AAR did not object to the format of the proposed monthly Report of Employees, Service, and Compensation but recommended that the report be changed to a quarterly report.

The AAR did not object to the elimination of the individual job classification titles from the Annual Report of Employees, Service, and Compensation. However, both the RRB and the RLEA objected. The RRB argued that this reduction would seriously impair its ability to carry out certain public commitments under the Railroad Unemployment Insurance Act. These commitments include answering inquiries from Congress, railroads and labor groups. The RRB also uses the data in its statistical publications.

Conclusions

The Commission recognizes that the proposed reductions in these reports as presented in the NPR will result in the elimination of certain data used by outside parties. However, on May 7, 1979, the Commission instituted a new data policy which only requires the reporting of information necessary to fulfill Commission regulatory functions, including the execution of federal laws. The Commission is legally required to supply the RRB with railroad employment data. Accordingly, in preparing this decision, the Commission mainly considered its data needs and those of the RRB. The Commission will no longer act as a data collection agent for various private interests.

We have reviewed the comments of the respondents in this proceeding and decided the following:

I. Classification of Job Titles

We will adopt the revised job classification titles as originally proposed in the NPR. The NPR proposed to revise the job classification titles to include the changes agreed upon by the ARR and the RLEA. Disputed items were resolved by following the guideline that job titles should not be reclassified unless the need for the change was specifically explained by a respondent. New titles have been added and obsolete titles have been deleted, as appropriate.

Both the RLEA and the AAR suggested other changes to the proposed job classification titles. However, neither respondent offered adequate reasons to depart from the above approach.

The new job classification titles are set forth in Appendix A with description, titles, and relation to the present classification.

A cross reference to the SOC system is also set forth in Appendix A. This was prepared for the benefit of other

[1] Railroad Unemployment Insurance Act, 49 U.S.C. 352, Sec. 2(h)(3).

[2] Statistical Policy Directive No. 10, Exec. Order No. 12318 and Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

government agencies and interested parties.

II. The Quarterly Report of Employees, Service, and Compensation, and the Preliminary Report of Number of Employees of Class I Railroads

In the NPR, we proposed to (1) combine the monthly Preliminary Report of Number of Employees of Class I Railroads and the Monthly Report of Employees, Service, and Compensation, (2) substantially reduce the combined reports' data elements, and (3) entitle it "the Monthly Report of Railroad Employees, Service, and Compensation."

The Commission has decided that the least burden is imposed on the carriers by having the Railroad Wage Statistics Data System, comprising 15 items of service hours and compensation data, reported in three segments. The Preliminary report of Number of Employees of Class I Railroads, after reflecting minor changes, will be continued to report the middle of the month count of employees. This will satisfy the aforementioned data needs of the RRB and Commission. The proposed Monthly Report of Railroad Employees, Service and Compensation will be changed to a quarterly report listing summarized data in columns 2 through 15 by classification group.

The revised Preliminary Report of Number of Employees of Class I Railroads (entitled "Monthly Report of Number of Railroad Employees") is shown in Appendix B, and the Quarterly Report of Railroad Employees, Service, and Compensation is shown in Appendix C.

III. The Annual Report of Employees, Service, and Compensation

The third segment of the reporting system will be an annual report. In the NPR we proposed an Annual Report of Employees, Service, and Compensation similar to the Monthly Report of Railroad Employees, Service, and Compensation, both including only summarized data.

The Commission has adopted an Annual Report of Railroad Employees, Service, and Compensation that includes individual job classification titles. This will also satisfy the aforementioned data needs of the RRB. This report is set forth in Appendix D.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. *et seq*, the Secretary of the Commission certifies that this Final Rule will not have a significant economic impact upon a substantial number of small entities. The economic impact is beneficial because many cost reducing provisions have been proposed such as eliminating and significantly reducing certain reporting requirements.

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

List of Subjects

49 CFR Part 1245

Railroad employees, Reporting requirements, Wages.

49 CFR Part 1246

Railroad employees, Reporting requirements.

The Commission adopts the classification of job titles, the cross reference to the SOC system, the revised Monthly Report of Number of Railroad Employees, the revised Quarterly Report of Railroad Employees, Service, and Compensation, and the revised Annual Report of Railroad Employees, Service, and Compensation as shown in Appendices A, B, C, and D.

Accordingly, effective January 1, 1983, 49 CFR Parts 1245 and 1246 will be amended as set forth in Appendix A.

This rule is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: November 3, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Simmons was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

Appendix A

PART 1245—[AMENDED]

1. Revise the text of 49 CFR 1245.1—*Rules governing classification of employees, service, and compensation,* to read:

§ 1245.1 Rules governing classification of employees, service, and compensation.

The rules governing the classification of railroad employees and reports of their service and compensation outlined in §§ 1245.3 and 1245.4 are required, and all Class I railroads within the scope of Section 11145 of the Interstate Commerce Act shall be governed by such rules in the preparation and submission of their annual and other periodic reports to the Interstate Commerce Commission in accordance with the forms adopted for such returns (§ 1245.2); and also with respect to any other matters covered by these rules.

2. Revise the title and text of 49 CFR 1245.2—*Report of service and compensation of railroad employees by class*—to read:

§1245.2 Reports of railroad employees, service and compensation.

Beginning with the reporting period commencing January 1, 1983, and quarterly thereafter until further ordered, each Class I railroad is required to file a Quarterly Report of Railroad Employees, Service, and Compensation, (Form QRSC). In addition, such carriers shall also file an Annual Report of Railroad Employees, Service, and Compensation, (Form ARSC) for each calendar year. Both reports shall be filed with the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423. The quarterly report shall be filed within thirty days after the end of each calendar quarter. The annual report shall be filed within forty five days after the end of the reporting year.

3. Revise the text of paragraphs (a) and (b) of 49 CFR 1245.4—*Forms required to be used* to read:

§ 1245.4 Forms required to be used.

(a) The report of information to the Interstate Commerce Commission on railroad employees, service and compensation includes two forms. Form A relates to employees other than train and engine service employees. Form B relates to train and engine service employees.

(b) With general reference to the statement of the compensation of employees in Forms A and B, it should be understood that the total compensation received by the employees in each Reporting Division, as well as the amount of work they perform, should be shown properly distributed under the prescribed column heads as indicated by the forms. It should be noted that if the work of an employee varies during a report period, his time and compensation should be apportioned accordingly. Amounts reported should be gross compensation paid.

* * * * *

§ 1245.5 [Removed]

4. Remove 49 CFR 1245.5—*Explanatory instructions pertaining to Form A—Column 1.*

§ 1245.7 [Removed]

5. Remove 49 CFR 1245.7, Appendix—Forms A and B.

PART 1246—[AMENDED]

6. Revise the Title and text of 49 CFR 1246.1—*Preliminary wage report*—to read:

§ 1246.1 Monthly report of number of railroad employees.

Each class I railroad shall file a Monthly Report of Number of Railroad Employees (Form MRRE) each month. The report should be mailed to Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, by the end of the month to which it applies.

Note.—The report forms prescribed by Parts 1245 and 1246 are available upon request from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

PART 1247—[AMENDED]

7. Add a new 49 CFR 1245.5 to read as follows:

§ 1245.5 Classification of job titles.

Number	Classification	Description	Typical titles	Relation to present classification
100	EXECUTIVES, OFFICIALS, AND STAFF ASSISTANTS			
101	Executives and General Officers	Chief executives, corporate department heads and major subdepartment heads.	President, Vice President, Assistant Vice President, Controller, General Counsel, Treasurer, Director (head of subdepartment), General Superintendent (subdepartment head), Chief Engineer, General Manager (department or subdepartment head), Chief Medical Officer.	More precisely defined than present No. 1, limited to executive management positions; adds new titles.
102	Corporate Staff Managers	Corporate executives and managers assisting department and subdepartment heads.	Director (other than subdepartment head), Assistant Director, Assistant General Manager (not regional), Manager, Assistant Manager, Assistant Chief Engineer, Purchasing Agent, Assistant General Counsel, Superintendent (not division), Assistant to (corporate executive or general officer), Executive Assistant (to corporate executive) Budget Officer.	New classification, providng a specific assignment for staff managers; adds new title.
103	Regional and Division Officers, Assistants and Staff Assistants.	Regional managers and assistants below the executive management level, and chief division officers.	Assistant General Manager, Assistant Regional Manager, General Superintendent, Assistant to General Manager, Division Superintendent, Master Mechanic, Division Sales Manager, District Sales Manager, Assistant Master Mechanic, District Engineer, Assistant Superintendent, Captain of Police, Division Engineer.	Similar to present No. 2 but limited to regional and divisional management; adds new title.
104	Transportation Officers/Managers	Managers directly supervising train and yard operations.	Train Master, Assistant Train Master, General Yardmaster, General Road Foreman, Road Foreman, Assistant Road Foreman, Chief Power Supervisor (motive).	New classification providing specific assignment for Operations Managers.
200	PROFESSIONAL AND ADMINISTRATIVE			
201	Professionals (other than those reported in 101 and 102).	Technical occupations requiring a high degree of training and/or supervising subprofessionals and technicians.	General Attorney, Assistant General Attorney, Attorney, Commerce Counsel, Medical Officer, Surgeon, Company Surgeon, Engineer, Architect, Chief Chemist, Nurse, Tax Accountant, Internal Auditor to General Accountant, Corporate Accountant, Supervisor Programing, Senior Computer System Specialist, Senior System Analyst, Chief Draftsman.	Corresponds to present ICC No. 3, but limited to professionals; adds new titles.
202	Subprofessionals	Technical occupations requiring a high degree of knowledge and/or skill.	Draftsman, Chemist, Assistant Chemist, X-ray Technician, Supervisor Estimating, Junior Engineer, Engineering Trainee, Photographer, Computer Programmer, Computer Analyst, Market Analyst, Pricing Analyst, Employment Supervisor, Research Analyst.	Corresponds to present ICC No. 3 but limited to subprofessionals; adds new titles.
203	Auditors, Traveling Auditors or Accountants.	Title is descriptive	Traveling Auditor, Accounting Specialist Auditors, Operations Traveling Auditors, Station Auditors.	Corresponds to present ICC No. 13.
204	General and Administrative Supervisors.	Supervisors responsible for administrative activity of a department, subdepartment, office or region.	General Supervisor, Supervisor, Chief Clerk, Office Supervisor, Supervisor Administration, Office Manager, Supervising Clerk, Head Clerk, Assistant Chief Clerk, Supervising Cashier, Division Supervisor, Regional Supervisor, Budget Supervisor, Administrative Supervisor, Manager of Materials, Administrative Assistant.	Consolidation of present ICC Nos. 4 and 5; adds new titles.
205	Sales and Traffic Representatives and Agents.	Non-supervisory occupations with predominant responsibilities for sales and customer relations.	Freight Traffic Agent, Coal Traffic Agent, Sales Representative, Freight Sales Representative, Freight Traffic Representative, Passenger Sales Representative.	New classification, containing a portion of present ICC No. 19; adds new titles.
206	Freight and Other Claim Agents and Investigators.	Occupations which have predominant duties investigating and handling freight and personal injury claims.	Claim Agent, Claim Investigator, Freight Claim Agent, Freight Claim Investigator.	Consolidates present ICC Nos. 20 and 21; adds new titles.
207	Supervising and Chief Claim Agents.	Title is descriptive	Chief Claim Agent, Chief Freight Claim Agent, Assistant Chief Claim Agent, Chief District Claim Agent, District Freight Claim Agent, Chief Claim Investigator.	Corresponds with present ICC No. 22.
208	Lieutenants and Sergeants of Police.	Title is descriptive	Police Lieutenant, Police Sergeant	Corresponds to present ICC No. 17.
209	Police Officers, Watchmen and Guards (Except Crossing and Bridge).	Title is descriptive	Police Officer, Patrolman, Watchman, Guard	Corresponds with present ICC No. 18.
210	Inspectors (Except Maintenance of Way and Equipment), Other Investigators, Examiners, Instructors, and Other Agents (Except Station Agents).	Miscellaneous occupations which have predominant duties of investigating, inspecting, reviewing, and instructing and which require a high degree of technical knowledge.	Rules Examiner, Supervisor Rules, Safety Supervisor, Safety Inspector, Fire Marshall, Fire Chief, Instructor, Supervisor Procedures, Supervisor Yard Procedures, Real Estate Agent, Real Estate Supervisor, Tax Agent.	Classification for a portion of similar occupations included in present ICC No. 19; adds new titles.
211	Buyers, and Sales Agents	Occupations whose duties are predominantly the purchase, sale, of company materials, supplies, and equipment.	Buyer, Assistant Buyer, Sales Agent, Assistant Sales Agent	Corresponds to present ICC No. 11 with materials and stones occupations omitted.
212	Clerical Technicians and Clerical Specialists.	Clerical occupations with duties to perform independently responsible work requiring special financial cost, accounting, or other technical knowledge.	Lead Clerk, Staff Assistant (clerical), Statistician, Cashier, Tellier, Assistant Statistician, Rate Clerk, Pricing Clerk, Computer Technician.	Corresponds to present ICC No. 6; adds new titles.
213	Office Machine and Data Equipment Operators.	Occupations with predominant duties of operating office machines and computer equipment.	Machine Operator, Clerk, Computer Operator, Keypunch Operator Office Machine Technician.	Corresponds to present ICC No. 8; adds new titles.
214	Secretaries, Stenographers, and Typists.	Secretaries, Stenographers, and Typists.	Secretary, Stenographer, Typists, Clerk Typist, Steno-clerk	Consolidates present ICC Nos. 9 and 10.
215	General and Other Clerks (excluding yard clerk and crew dispatcher).	Clerical occupations not otherwise classified.	File Clerk, General Clerk, Bookkeeper, Ticket Clerk, Records Clerk, Trace Clerk, Assignment Clerk, Personnel Clerk, M of W Clerks, M of E Clerks.	Corresponds to present ICC NO. 7; adds new titles.
216	Telephone and Switchboard Operators.	Title is descriptive	Switchboard Operator, Chief Operator	Present ICC No. 14.

Number	Classification	Description	Typical titles	Relation to present classification
217	Building and Office Attendants	Miscellaneous occupations associated with office building functions.	Elevator Operator, Elevator Starter, Janitor, Cleaner, Porter	Consolidates present ICC Nos. 16 and 26.
218	Messengers and Office Persons	Title is descriptive	Messenger, Office Person	Present ICC No. 15.
219	Motor Vehicle Operators	Occupations associated with automobile and truck driving.	Truck Driver, Bus Driver, Driver, Chauffeur	Consolidates present ICC Nos. 24 and 25.
300	MAINTENANCE OF WAY AND STRUCTURES			
301	Supervisors, Maintenance of Way, Structures, Communication and Signals.	Occupations with supervisor responsibility for maintenance of way and structures (other than regional and divisional officers).	Roadmaster, Division Roadmaster, Supervisor Track, Supervisor Bridges and Buildings, Supervisor Communications and Signals, Assistant Supervisor, General Foreman (MW&S), Assistant General Foreman (MW&S), Master Carpenter.	Corresponds with present ICC Nos. 27 and 44.
302	Maintenance of Way, Structures, Communication and Signals, and Scale Inspectors.	Title is descriptive	Chief Bridge and Building Inspector, Chief Scale Inspector, Bridge and Building Inspector, Scale Inspector, Roadway Equipment Inspector, Track and Roadway Inspector, Instrument Man, Rodman, Chainman, Inspector Communications and Signals, Signal Inspector.	Corresponds with present ICC No. 28 plus part of old No. 44.
303	Bridge and Building Gang Foreman	Title is descriptive	Gang Foreman, Lead Workman	Consolidates present ICC No. 29 with bridge and building portion of present ICC No. 39.
304	Bridge and Building Carpenters	Title is descriptive	Carpenter	Corresponds with present ICC No. 30.
305	Bridge and Building Ironworkers	Title is descriptive	Ironworker	Corresponds with present ICC No. 31.
306	Bridge and Building Painters	Title is descriptive	Painter, Sign Painter	Corresponds with present ICC No. 32.
307	Masons, Bricklayers, Plasterers, and Plumbers.	Title is descriptive	Mason, Bricklayer, Plasterer, Plumber, Operator, Grinder, Welder (M of W).	Corresponds with present ICC Nos. 23 and 33.
308	Bridge and Building Helpers and Apprentices.	Title is descriptive	Carpenter Helper, Ironworker Helper, Mason Helper, Plumber Helper, Painter Helper, Apprentice Carpenter, Apprentice Ironworker, Apprentice Mason, Plumber Apprentice, Apprentice Painter, Welder Helper.	Corresponds with present ICC No. 34; adds new titles.
309	Bridge and Building Gang and Bridge and Building Department Laborers.	Title is descriptive	Bridge and Building Laborer	Corresponds with present ICC No. 43.
310	Track Gang Foremen (Extra Gang work train laborers).	Title is descriptive	Gang Foreman, Assistant Foreman	Corresponds with present ICC No. 38.
311	Gang or Section Foreman	Title is descriptive	Gang Foreman, Assistant Foreman, Section Foreman	Corresponds with present ICC No. 40.
312	Extra Gang Laborers	Title is descriptive	Trackman, Fence Laborer	Corresponds with present ICC No. 41.
313	Section Laborers	Title is descriptive	Trackman, Track and Roadway Section Laborer	Corresponds with present ICC No. 42.
314	Machine Operators	Title is descriptive	Craneman, Portable Equipment Engineer, Portable Equipment Operator, Machine Operator, Helper.	Consolidates present ICC No. 35, 36, and 37.
315	Gang Foremen, Communications and Signals.	Title is descriptive	Gang Foreman, Assistant Gang Foreman, Lead Signal Maintainer.	Consolidates present ICC No. 45 with communications and signals occupations included in present ICC No. 39.
316	Signalmen and Signal Maintainers	Title is descriptive	Signalman, Signal Maintainer	Corresponds with present ICC No. 46.
317	Linemen and Groundmen and Communications Craftsman.	Communications equipment installers, Maintainers, and repairmen.	Electrical Worker (Lineman), Electrical Worker (Groundman) Communications maintainer.	Corresponds with present ICC No. 47.
318	Assistant Signalmen and Assistant Signal Maintainers.	Title is descriptive	Assistant Signalman, Assistant Signal Maintainer	Corresponds with present ICC No. 48.
319	Signal Helpers and Signal Maintainer Helpers.	Title is descriptive	Signalman Helper, Signal Maintainer Helper	Corresponds with present ICC No. 49.
320	Camp Car Cooks	Occupations engage in food service in camp cars.	Camp Car Cook, Camp Car Helper	Corresponds with part of present ICC No. 97.
400	MAINTENANCE OF EQUIPMENT AND STORES			
401	Supervisors and General Foremen, Maintenance of Equipment.	Occupations with supervisory responsibility for maintenance of equipment (other than regional and division officers).	General Foreman Shop, General Foreman Enginehouse, General Foreman Diesel Terminal, Assistant General Foreman (M of E).	Corresponds with present ICC No. 50; adds new titles.
402	Supervisors and General Foremen, Materials and Stores.	Occupations with supervisory responsibility for stores and materials.	Supervisor Materials, Assistant Supervisor Materials, General Foreman Stores, General Foreman Reclamation Plant, Assistant General Foreman.	Corresponds with present ICC No. 51; adds new titles.
403	Equipment, Shop, Electrical Inspectors.	Title is descriptive	Chief Electrical Inspector, Chief Shop and Equipment Inspector, Electrical Inspector, Equipment Inspector, Inspector Diesel Locomotive, Fuel Inspector.	Corresponds with part of present ICC No. 52.
404	Materials and Supplies Inspectors	Title is descriptive	Materials and Supplies Inspector, Chief Materials and Supplies Inspector, Timber Inspector, Tie Inspector.	Corresponds with part of present ICC No. 52.
405	Storekeeper	Title is descriptive	Storekeeper, Assistant Storekeeper, Materials Clerk, Store Clerk.	Corresponds to materials and stores occupation in present ICC No. 11.
406	Gang Foremen, Maintenance of Equipment.	Title is descriptive	Gang Foreman	Consolidates present ICC Nos. 53 and 68.
407	Blacksmiths	Title is descriptive	Blacksmith	Corresponds with present ICC No. 54.
408	Boilermakers	Title is descriptive	Boilermaker	Corresponds with present ICC No. 55.
409	Carmen (Freight)	Repair and inspect freight cars	Car Repairmen, Car Inspector, Carman, Painter	Corresponds with present ICC No. 57.
410	Carmen (Other)	Title is descriptive	Carmen	Corresponds with present ICC No. 56.
411	Electrical Workers (A)	Electricians	Electrician, Electrical Worker	Corresponds with present ICC No. 58.
412	Electrical Workers (B)	Electrical workers—occupations specialized in operating heavy equipment.	Crane Operator, Load Dispatcher, Power Station Operator, Assistant Power Director.	Corresponds with present ICC No. 59.
413	Electrical Workers (C)	Electrical Workers—occupation specialized in heavy equipment operating at coal, grain, and ore docks.	Coal and Ore Elevator Operator (electrical), Grain Elevator Operator (electrical).	Corresponds with present ICC No. 60.
414	Machinists	Title is descriptive	Machinist	Corresponds with present ICC No. 61.
415	Sheet Metal Workers	Title is descriptive	Sheet Metal Worker	Corresponds with present ICC No. 63.
416	Skilled Trades, Helpers, Maintenance of Equipment and Stores.	Title is descriptive	Helper	Corresponds with present ICC No. 64.
417	Apprentices, Maintenance of Equipment and Stores.	Title is descriptive	Apprentice, Helper Apprentice	Consolidates present ICC Nos. 65 and 66.
418	Coach Cleaners	Title is descriptive	Coach Cleaner	Corresponds with present ICC No. 67.
419	Laborers: Shops, Enginehouses, and Power Plants.	Title is descriptive	Laborer	Consolidates present ICC Nos. 70 and 71.
420	Gang Foremen, Materials and Stores.	Title is descriptive	Gang Foremen	Corresponds with present ICC No. 69.
421	Equipment Operators and General Laborers, Materials and Stores.	Title is descriptive	Laborer, Materials Handler, Equipment Operators, Machine Operators.	Corresponds with present ICC No. 72, plus part of ICC No. 24.

Number	Classification	Description	Typical titles	Relation to present classification
422	Stationary Engineers	Title is descriptive	Chief Engineer (Steam Plant) Engineer, Stationary Engineer	Corresponds with present ICC No. 73.
423	Stationary Firemen	Title is descriptive	Stationary Fireman, Power Equipment Operator Helper, Oiler	Corresponds with present ICC No. 74.
500	TRANSPORTATION, OTHER THAN TRAIN AND ENGINE			
501	Transportation Supervisor and Chief Train Dispatcher.	Occupational directly supervising train operation.	Chief Train Dispatcher, Supervisor Train Operations, Transportation Supervisor, Supervisor Train Operations, Supervisor Locomotive and Car Distribution, Assistant Chief Train Dispatcher.	Corresponds with present ICC No. 75; adds new titles.
502	Train Dispatchers	Title is descriptive	Train Dispatcher	Corresponds with present ICC No. 76.
503	Station, Freight and Passenger Agents.	Occupations with responsibility for station operations.	Supervising Station Agent, Assistant Supervising Station Agent, Station Agent, Freight Agent, Passenger Agent, Ticket Agent, Traveling Agent, Agent Operators.	Consolidates present ICC Nos. 12, 78, 79, and 80.
504	Chief Operators and Wire Chiefs	Title is descriptive	Supervising Operator, Chief Operator, Assistant Supervising Operator, Wire Chief.	Corresponds with present ICC No. 81.
505	Clerk Operators, Towerman, Train Directors.	Title is descriptive	Clerk Operator, Block Operator, Operator, Towerman, Train Directors.	Consolidates present ICC Nos. 77, 82 and 83.
506	Station Masters and Assistants, Supervising Baggage Agents, Baggage Agents and Assistants.	Title is descriptive	Stationmaster, Assistant Stationmaster, Supervising Baggage Agent, Baggage Agent, Assistant Baggage Agent, Parcel Room Agent.	Consolidates present ICC Nos. 84, 85, and 86.
507	Baggage, Parcel Room and Station Attendants.	Title is descriptive	Baggage Attendant, Parcel Room Attendant, Station Attendant, Gateman, Announcer, Station Usher, Red Cap, Information Bureau Attendant.	Corresponds with present ICC No. 87.
508	General and Assistant General Foremen, Stations, Warehouses, Grain Elevators, and Docks.	Title is descriptive	General Foreman, Assistant General Foreman	Consolidates present ICC Nos. 88 and 89.
509	Gang Foremen, Stations, Warehouses, Grain Elevators and Docks.	Title is descriptive	Gang Foreman	Corresponds with present ICC No. 90.
510	Grain Elevator, and Dock Laborers	Title is descriptive	Laborer	Consolidates present ICC Nos. 93 and 94.
511	Station, and Warehouse Laborers	Title is descriptive	Loader, Sealer	Corresponds with present ICC No. 91.
512	Truckers (Station, Warehouse and Platforms).	Title is descriptive	Trucker	Corresponds with present ICC No. 92.
513	Food and Lodging Manager, Supervisors.	Occupations with responsibility for supervision of food service or lodging.	Manager Lodging House, Restaurant Manager, Dining Car Supervisor, Dining Car Steward.	Corresponds with present ICC No. 95.
514	Transportation and Dining-Service Inspectors.	Title is descriptive	Instructor Chef, Restaurant Inspector, Freight Service Inspector, Baggage Inspector.	Corresponds with present ICC No. 99.
515	Waiters and Kitchen Helpers (Restaurant and Dining Car).	Title is descriptive	Waiter-in-charge, Waiter	Corresponds with present ICC No. 97.
516	Chefs and Cooks (Restaurant and Dining Car).	Title is descriptive	Chef, Cook	Corresponds with present ICC No. 96.
517	Marine Officers and Workers and Shore Workers.	All occupations with predominant duties which are the operation of marine service.	Captain, Engineer, Mate, Deckhand, Oiler, Purser, Boat Master, Fireman, Wharf Master, Able Seaman, Baggageman, Boat Dispatcher.	Corresponds with present ICC No. 98.
518	Train Attendants	Passenger train occupations other than train service and dining car operation.	Porter, Buffet Lounge Attendant, Stewardess	Consolidates present ICC Nos. 100 and 101.
519	Bridge Operators and Helpers	Title is descriptive	Bridge Operator	Corresponds with present ICC No. 102.
520	Bridge and Crossing Flagmen and Gatemen.	Title is descriptive	Bridge Flagman, Crossing Gateman	Corresponds with present ICC No. 103.
521	Yard Clerks	Clerical occupations situated in yards and yard offices.	Yard Clerk, Yard Clerk Caller, Yard Demurrage Clerk, Yard Dispatcher Clerk, Piggyback Clerk.	New classification.
522	Crew Dispatchers	Title is descriptive	Crew Dispatcher, Crew Caller	New classification.
523	Yardmasters and Assistant Yardmasters.	Title is descriptive	Yardmaster, Assistant Yardmaster	Consolidates present ICC No. 105 and 106.
600	TRANSPORTATION, TRAIN AND ENGINE			
601	Switchtenders	Title is descriptive	Switchtender	Corresponds to present ICC No. 107.
602	Car Retarder Operators and Ground Service Employees.	Ground occupations not part of yard crew.	Car Retarder Operator, Skatesman, Herder, Yard Pilot	New classification—part of present ICC No. 119; adds new titles.
603	Outside Hostlers	Title is descriptive	Outside Hostler	Corresponds to present ICC No. 108.
604	Outside Hostler Helpers	Title is descriptive	Outside Hostler Helper	Corresponds to present ICC No. 110.
605	Inside Hostler	Title is descriptive	Inside Hostler	Corresponds to present ICC No. 109.
606	Road Passenger Conductors	Title is descriptive	Passenger Conductor	Corresponds to present ICC No. 111.
607	Assistant Road Passenger Conductors and Ticket Collectors.	Title is descriptive	Assistant Passenger Conductor, Ticket Collector	Corresponds to present ICC No. 112.
608	Road Freight Conductors (Through Freight).	Title is descriptive	Freight Conductor, Work Train Conductor, (paid through rate)	Corresponds to present ICC No. 113.
609	Road Freight Conductors (Local and Way Freight).	Title is descriptive	Freight Conductor, Work Train Conductor, (paid local rate)	Corresponds to present ICC No. 114.
610	Road Passenger Baggageperson	Title is descriptive	Baggageperson	Corresponds to present ICC No. 115.
611	Road Passenger Brakemen and Flagmen.	Title is descriptive	Passenger Brakeman, Passenger Flagman	Corresponds to present ICC No. 116.
612	Road Freight Brakemen and Flagmen (Through Freight).	Title is descriptive	Freight Brakeman, Freight Flagman, Work Train Brakeman (paid through rate).	Corresponds to present ICC No. 117.
613	Road Freight Brakemen and Flagmen (Local and Way Freight).	Title is descriptive	Freight Brakeman, Freight Flagman, Work Train Brakeman, (paid local rate).	Corresponds to present ICC No. 118.
614	Yard Conductors and Yard Foremen.	Title is descriptive	Yard Conductor, Yard Foreman	Corresponds to present ICC No. 119 Less Car Retarder Operator and other ground occupations not part of Yard Crew.
615	Yard Brakemen and Yard Helpers	Title is descriptive	Yard Brakeman, Yard Helper	Corresponds to present ICC No. 120; adds new titles.
616	Road Passenger Engineers and Motormen.	Title is descriptive	Passenger Engineer, Motorman, Operator	Corresponds to present ICC No. 121.
617	Road Freight Engineers (Through Freight).	Title is descriptive	Freight Engineer, Work Train Engineer, (paid through rate)	Corresponds to present ICC No. 122.
618	Road Freight Engineers (Local and Way Freight).	Title is descriptive	Freight Engineer, Work Train Engineer, (paid local rate)	Corresponds to present ICC No. 123.
619	Yard Engineers	Title is descriptive	Yard Engineer	Corresponds to present ICC No. 124.
620	Road Passenger Firemen and Helpers.	Title is descriptive	Passenger Fireman	Corresponds to present ICC No. 125.

Number	Classification	Description	Typical titles	Relation to present classification
621	Road freight Firemen and Helpers (Through Freight).	Title is descriptive	Freight Fireman	Corresponds to present ICC No. 126.
622	Road Freight Firemen and Helpers (Local and Way Freight).	Title is descriptive	Freight Fireman	Corresponds to present ICC No. 127.
623	Yard Firemen and Helpers	Title is descriptive	Yard Fireman	Corresponds to present ICC No. 128.

8. Revise 49 CFR 1245.6 to read as follows:

§ 1245.6 Cross reference to standard occupational classification manual.

Job title	SOC
100 *Executives, Officials and Staff Assistants*	
101 Executive and General Officers:	
President	121.
Vice President	121.
Assist. Vice President	121.
Controller	122.
General Counsel	211.
Treasurer	122.
Director (Head of Sub-Department)	139.
General Superintendent	139.
Subdepartment Head	139.
Chief Engineer	1342 and 1639.
General Manager (Dept. or Subdepartment Head).	137.
Chief Medical Officer	261.
102 Corporate Staff Managers:	
Director (Other Than Sub-department Head).	139.
Assist. Director	139.
Assist. General Manager (Not Regional).	137.
Manager	137.
Assist. Manager	137.
Assist. Chief Engineer	1639.
Purchasing Agent	1449.
Assist. General Counsel	211.
Superintendent (Not Division)	1342.
Assist. to (Corporate Executive or Gen. Officer).	149.
Executive Assist. (To Corporate Executive).	149.
Budget Officer	1419.
103 Regional and Division Officers, Assistants and Staff Assistants:	
Assist. General Manager	137.
Assist. Regional Manager	1342.
General Superintendent	1342.
Assist. to General Manager	137.
Division Superintendent	1342.
Master Mechanic	6117.
Division Sales Manager	125.
District Sales Manager	125.
Assist. Master Mechanic	6117.
District Engineer	1342 and 1639.
Assist. Superintendent	1342.
Captain of Police	5112.
Division Engineer	1638 and 1342.
104 Transportation Officers/Managers:	
Train Master	1342.
Assist. Train Master	1342.
General Yard Master	8113.
General Road Foreman	1342.
Road Foreman	1342.
Assist. Road Foreman	1342.
Chief, Power Supervisor (Motive)	1342.
200 *Professional and Administrative*	
201 Professionals (Other Than Those Reported in 101 and 102):	
General Attorney	211.
Assist. General Attorney	211.
Attorney	211.
Commerce Counsel	211.
Medical Officer	261.
Surgeon	261.
Company Surgeon	261.
Engineer	1639.
Architect	161.
Chief Chemist	1845.
Nurse	29 and 366.
Tax Accountant	1412.
Internal Auditor to Gen. Accountant	1412.
Corporate Accountant	1412.
Supervisor Programming	137.
Senior Computer System	1712.
Specialist Senior System Analyst	1712.
Chief Draftsman	372.
202 Subprofessionals:	
Draftsman	372.
Chemist	1845.
Assist. Chemist	1845.
X-ray Technician	365.
Supv. Estimating	149.
Junior Engineer	1639.
Engineer Trainee	1639.
Photographer	326.
Computer Programmer	397.
Computer Analyst	1712.
Market Analyst	1912.
Pricing Analyst	4716.
Employment Supv.	123.
Research Analyst	1721.
203 Auditors, Traveling Auditors or Accountants:	
Traveling Auditor	1412.
Accounting Specialist Auditor	1412.
Operations Traveling Auditor	1412
Station Auditors	1412.
204 General and Administrative Supervisors:	
General Supv.	4511 and 137.
Supv.	4511 and 137.
Chief Clerk	4511 and 137.
Office Supv.	4511 and 137.
Supv. Admin.	149.
Office Manager	137.
Supv. Clerk	4511 and 137.
Head Clerk	4511 and 137.
Assist. Chief Clerk	4511 and 137.
Supv. Cashier	4529.
Division Supv.	4511 and 137.
Regional Supv.	4511 and 137.
Budget Supv.	1419.
Admin. Supv.	149.
Manager of Materials	4525.
Admin. Assist.	149.
205 Sales and Traffic Representatives and Agents:	
Freight Traffic Agent	4152.
Coal Traffic Agent	4152.
Sales Representative	4152.
Freight Sales Representative	4152.
Freight Traffic Representative	4152.
Passenger Sales Representative	4152.
206 Freight and other Claim Agents and Investigators:	
Claim Agent	4712.
Claim Investigator	4783.
Freight Claim Agent	4712.
Freight Claim Investigator	4783.
207 Supervising and Chief Claim Agents:	
Chief Claim Agent	4529 and 1473.
Chief Freight Claim Agent	4528.
Assist. Chief Claim Agent	4528 and 1473.
Chief District Claim Agent	4528.
District Freight Claim Agent	4528.
Chief Claim Investigator	4783.
208 Lieutenants and Sergeants of Police:	
Police Lieutenant	5112.
Police Sergeant	5112.
209 Police Officers, Watchmen and Guards (Except Crossing and Bridge):	
Police Officer	5132.
Patrolman	5144.
Watchman	5144.
Guard	5144.
210 Inspectors (Except Maintenance of Wage and Equipment) other Investigators, Examiners, Instructors, and other Agents (except Station Agents):	
Rules Examiner	1473.
Supv. Rules	1473.
Safety Supv.	1473.
Safety Inspector	1473.
Fire Marshall	5122.
Fire Chief	1131 and 5111.
Instructor	239.
Supv. Procedures	4525.
Supv. Yard Procedure	4525.
Real Estate Agent	1353.
Real Estate Supv	1353.
Tax Agent	1412.
211 Buyers, and Sales Agents:	
Buyer	1449.
Assist. Buyer	1449.
Sales Agent	4235.
Assist. Sales Agent	4235.
212 Clerical Technicians and Clerical Specialists:	
Lead Clerk	4511 and 463.
Staff Assistant (Clerical)	4511 and 463.
Statistician	1733.
Cashier	4364.
Teller	4364.
Assist. Statistician	1733.
Rate Clerk	4716.
Pricing Clerk	4716.
Computer Technician	4612.
213 Office Machine and Data Equipment Operators:	
Machine Operator	4718.
Clerk	463
Computer Operator	4612.
Keypunch Operator	4793.
Office Machine Technician	4718.
214 Secretaries, Stenographers, and Typists:	
Secretary	4622.
Stenographer	4623.
Typist	4624.
Clerk Typists	4624.
Steno. Clerk	4623.
215 General and other Clerks (Excluding Yard Clerk and Crew Dispatcher):	
File Clerk	4696.
General Clerk	463.
Bookkeeper	4712.
Ticket Clerk	4644.
Records Clerk	4696.
Trace Clerk	463.
Assignment Clerk	4752.
Personnel Clerk	4692.
M of W Clerks	4699.
M of E Clerks	4699.
216 Telephone and Switchboard Operators:	
Switchboard Operator	4732.
Chief Operator	4523.
217 Building and Office Attendants:	
Elevator Operator	5245.
Elevator Starter	5241.
Janitor	5244.
Cleaner	5244.
Porter	5244.
218 Messengers and Office Persons:	
Messenger	4745.
Office Person	4745.
219 Motor Vehicle Operators:	
Truck Driver	8213 and 8214.
Bus Driver	8215.
Driver Chauffeur	8216.
300 *Maintenance of Way and Structures*	
301 Supervisors, Maintenance of Way, Structures, Communication and Signals:	
Roadmaster	1342.
Division Roadmaster	1342.
Supv. Track	812.
Supv. Bridges and Buildings	133.
Supv. Communications & Signals	1341.
Assist. Supv	1341.
General Foreman	1342.
Assist. General Foreman	1342.
Master Carpenter	6313.

Job title	SOC
302 Maintenance of Way, Structures, Communication and Signals, and Scale Inspectors:	
Chief Bridges & Building Inspector	782.
Chief Scale Inspector	782.
Bridge & Building Inspector	1472.
Scale Inspector	782.
Roadway Equipment Inspector	828.
Track and Roadway Inspector	828.
Instrument Man	6881 and 6151.
Roadman	1472 and 8769.
Chainman	613.
Inspector Communications & Signals.	1341.
Signal Inspector	1341.
303 Bridge and Building Gang Foreman:	
Gang Foreman	6318.
Lead Foreman	6318.
304 Bridge and Building Carpenter: Carpenter.	6422.
305 Bridge and Building Ironworkers: Iron Worker.	6473.
306 Bridge and Building Painter:	
Painter	6442.
Sign Painter	6863.
307 Masons, Bricklayers, Plasterers, and Plumbers:	
Mason	6413, 6444, 6463, and 6412.
Bricklayer	6412.
Plasterer	6444.
Plumber	645.
Operator	6467.
Grinder	6467.
Welder	7714.
308 Bridge and Building Helpers and Apprentices:	
Bridge and Building Helper Appr	6473.
Carpenter Helper	8642.
Iron Worker Helper	6473 and 862.
Mason Helper	8641.
Plumber Helper	8645.
Painter Helper	8644.
Apprentice, Carpenter	6422.
Apprentice, Iron Worker	6473.
Apprentice Mason	6412, 6413, 6444, and 6463.
Plumber Apprentice	645.
Apprentice Painter	6442 and 8644.
Welder Helper	862.
309 Bridge and Building Gang and Bridge and Building Department Labors: Bridge and Building Labor.	871.
310 Track Gang Foreman (Extra Gang Work Train Laborers):	
Gang Foreman (Track)	6318.
Assist. Foreman	6318.
311 Gang or Section Foreman:	
Gang Foreman	6318.
Assist. Foreman	6318.
Section Foreman	6318.
312 Extra Gang Laborers:	
Trackman	6467.
Fence Laborer	6479 and 8769.
313 Section Laborers:	
Trackman	8769.
Track & Roadway Section Labor	8769.
314 Machine Operators:	
Craneman	8315.
Portable Equipment Engineer	8312.
Portable Equipment Operator	8319.
Machine Operator	8319.
Helper	8618.
315 Gang Foreman, Communications and Signals:	
Gang foreman	6318.
Assist. Gang Foreman	6318.
Lead Signal Maintainer	6318.
316 Signal and Signal Maintainer:	
Signalman	8233.
Signal Maintainer	6151 and 8233.
317 Linemen and Groundmen and Communications Craftsman:	
Electrical Worker (lineman)	6433.
Electrical Worker (groundsman)	6432.
Communications Maintainer	6151.
318 Assistant Signalmen and Assistant Signalmen Maintainers:	
Assist. Signalman	8233 and 6151.
Assist. Signal Maintainer	6151 and 8233.
319 Signal Helpers and Signal Maintainer Helpers:	
Signalman Helper	8635.
Signalman Maintainer Helper	8635.
320 Camp Car Cooks:	
Camp Car Cook	5214.
Camp Car Helper	5219.
400 *Maintenance of Equipment and Stores*	
401 Supervisors and General Foreman, Maintenance of Equipment:	
General Foreman Shop	6318 and 1342.
General Foreman Enginehouse	6318 and 1342.
General Foreman Diesel Terminal	6318 and 1342.
Assist. General Foreman (M&E)	6318 and 1342.
402 Supervisors and General Foreman, Materials and Stores:	
Supv. Materials	4525.
Assist. Supv. Materials	4525.
General Foreman Stores	4524.
General Foreman Reclamations Plant.	6318.
Assist. General Foreman	6318.
403 Equipment, Shop, Electrical Inspectors:	
Chief Electrical Inspector	6314.
Chief Shop & Equipment Inspector	1472.
Electrical Inspector	1472.
Equipment Inspector	6881.
Inspector Diesel locomotive	6881.
Fuel Inspector	6831.
404 Materials and Supplies Inspector:	
Materials and Supplies Inspector	782.
Chief Materials and Supplies	4525.
Inspector	782.
Timber Inspector	782.
Tie Inspector	782.
405 Storekeeper:	
Storekeeper	4754.
Assist. Storekeeper	4754.
Materials Clerk	4754.
Store Clerk	4754.
406 Gang Foreman, Maintenance of Equipment: Gang Foreman.	6318.
407 Blacksmith:	
Blacksmiths	6179.
408 Boilermakers:	
Boilermaker	6814.
409 Carmen (Freight):	
Car Repairmen	6117.
Car Inspector	828.
Car Painter	6442.
410 Carmen (other):	
Carman	6117.
411 Electrical Workers (A):	
Electrician	6432.
Electrical Worker	6159.
412 Electrical Workers (B):	
Crane Operator	8315.
Load Dispatcher	4751.
Power Station Operator	6932.
Assist. Power Director	6932.
413 Electrical Workers (C):	
Coal and Ore Elevator Operator (elec).	8319.
Grain Elevator Operator (electrical)	8319.
414 Machinists:	
Machinist	6813.
415 Sheet Metal Workers:	
Sheet Metal Worker	6824.
416 Skilled Trades, Helpers, Maintenance of Equipment and Stores: Helper.	861, 862, 863, and 864.
417 Apprentices, Maintenance of Equipment and Stores:	
Apprentice	863.
Helper Apprentices	863.
418 Coach Cleaners: Coach Cleaner	875.
419 Laborers; Shops, Enginehouses, and Power Plants: Laborer.	8769, 86, and 87.
420 Gang Foreman, Materials and Stores: Gang Foreman.	6318.
421 Equipment Operators and General Laborers, Materials and Stores:	
Laborer	8725, and 8769.
Materials Handler	8726.
Equipment Operator	8239.
Machine Operator	8319.
422 Stationary Engineers:	
Chief Engineer (Steam Plant)	6932.
Engineer	6932.
Stationary Engineer	6931.
423 Stationary Firemen:	
Stationary Fireman	5122 and 8619.
Power Equipment Operator Helper	8319.
Oiler	614.
500 *Transportation other Than Train and Engine*	
501 Transportation Supervisor and Chief Train Dispatcher:	
Chief Train Dispatcher	8113.
Supv. Train Operator	1342.
Transportation Supv	1342.
Supv. Locomotives and Car Dist	4759 and 8111.
Assist. Chief Train Dispatcher	8113.
502 Train Dispatchers: Train Dispatcher.	8113.
503 Station, Freight and Passenger Agents:	
Supv. Station Agent	4514.
Assist. Supv. Station Agent	4514.
Station Agent	4514.
Freight Agent	4644.
Passenger Agent	4644.
Ticket Agent	4644.
Traveling Agent	4644.
Agent Operators	4514.
504 Chief Operators and Wire Chiefs:	
Supv. Operator	4523.
Chief Operator	4523.
Assist. Supv. Operator	4523.
Wire Chief	4523 and 60.
505 Clerk Operators, Towerman, Train Directors:	
Clerk Operator	4632.
Block Operator	4632.
Operator	4632.
Towerman	8239.
Train Director	8113.
506 Station Masters and Assistants, Supervising Baggage Agents, Baggage Agents and Assistants:	
Stationmaster	1342.
Assist. Station Master	1342.
Supv. Baggage Agent	4525.
Baggage Agent	5262.
Assist. Baggage Agent	5262.
Parcel Room Agent	4744.
507 Baggage Parcel Room and Station Attendants:	
Baggage Attendant	5262.
Parcel Room Attendant	4744.
Station Attendant	4514.
Gateman	5144.
Announcer	4649.
Station Usher	5256.
Red Cap	5262.
Information Bureau Attendant	4649.
508 General and Assistant General Foreman, Stations. Warehouses, Grain Elevators and Docks:	
General Foreman	6318.
Assist. General Foreman	6318.
509 Gang Foreman, Stations, Warehouses, Grain Elevators and Docks:	
Gang Foreman	6318.
510 Grain Elevator and Dock Laborers:	
Laborer	8242.
511 Station and Warehouse Laborers:	
Loader	8726.
Sealer	8769 and 8724.
512 Trucks (Station, Warehouse and Platforms):	
Trucker	8214.
513 Food and Lodging Manager, Supervisors:	
Manager Lodging House	1351.
Restaurant Manager	1351.
Dining Car Supv.	5211, and 1473.
Dinning car Steward	5211.
514 Transportation and Dining Service Inspectors:	
Instructor Chef	5214.
Restaurant Inspector	828.
Freight Service Inspector	828.
Baggage Inspector	828.
515 Waiters and Kitchen Helpers (Restaurant and Dining):	
Waiter-in-Charge	5211.
Waiter	5211.
516 Chefs and Cooks (Restaurant and Dining Car):	
Chef	5211.
Cook	5211 and 5214.
517 Marine Officers and Workers and Shore Workers:	
Captain	8242.
Engineer	8244.
Mate	8242.

Job title	SOC
Deckhand	8243.
Oiler Purser	8244.
Boat Master	8241.
Fireman	8243.
Wharf Master	1342.
Able Seaman	8243.
Baggageman	5262.
Boat Dispatcher	1342.
518 Train Attendants:	
Porter	5262.
Buffet Lounge Attendant	4366.
Stewardess	5211.
519 Bridge Operators and Helpers: Bridge Operator.	8245.
520 Bridge and Crossing Flagmen and Gatemen:	
Bridge Flagman	8769.
Crossing Gateman	5144.
521 Yard Clerks:	
Yard Clerk	4754.
Yard Caller	4745.
Yard Dispatcher Clerk	4752.
Piggyback Clerk	4753.
Yard Demurrage Clerk	4715.
522 Crew Dispatchers:	
Crew Dispatcher	4751 and 4525.
Crew Caller	4745.
523 Yardmasters and Assistant Yardmasters:	
Yardmaster	8113.
Assist. Yardmaster	8113.
600 *Transportation, Train and Engine*	
601 Switchtenders: Switchtender	8233.
602 Car Retarder Operators and Ground Service Employees:	
Car Retarder Operator	8239.
Skatesman	8769.
Herder	8769.
Yard Pilot	8113.
603 Outside Hostlers: Outside Hostler	8232.
604 Outside Hostlers Helpers: Outside Hostler Helper.	8232.
605 Inside Hostlers: Inside Hostler	8232.
606 Road Passenger Conductors: Passenger Conductor.	8113.
607 Assistant Road Passenger Conductor and Ticket Collectors:	
Assistant Passenger Conductor	8113.
Ticket Collector	5256.
608 Road Freight Conductors (Through Freight):	
Freight Conductor	8113.
Work Train Conductor	8113.
609 Road Freight Conductors (Local and Way Freight):	
Freight Conductor	8113.
Work Train Conductor	8113.
610 Road Passenger Baggagepersons: Baggageperson.	5262.
611 Road Passenger Brakeman and Flagman:	
Passenger Brakeman	8233.
Passenger Flagman	5142.
612 Road Freight Brakemen and Flagmen (Through Freight):	
Freight Brakeman	8233.
Freight Flagman	5142.
Work Train Brakeman	8233.
613 Road Freight Brakemen and Flagmen (Local and Way Freight):	
Freight Brakeman	8233.
Freight Flagman	5142.
Work Train Brakeman	8233.
614 Yard Conductors and Yard Foremen:	
Yard Conductor	8113.
Yard Foreman	8113.
615 Yard Brakemen and Yard Helpers:	
Yard Brakeman	8233.
Yard Helper	8769.
616 Road Passengers Engineers and Motormen:	
Passenger Engineer	8232.
Motorman Operator	8232.
617 Road Freight Engineers (Through Freight):	
Freight Engineer	8232.
Work Train Engineer	8232.
618 Road Freight Engineers (Local and Way Freight):	
Freight Engineer	8232.
Work Train Engineer	8232.
619 Yard Engineers: Yard Engineer	8232.
620 Road Passenger Firemen and Helpers: Passenger Fireman.	8232.
621 Road Freight Firemen and Helpers (Through Freight): Freight Fireman.	8232.
622 Road Freight Firemen and Helpers (Local and Way Freight): Freight Fireman.	8232.
623 Yard Firemen and Helpers: Yard Fireman.	8232.

Appendix B

Interstate Commerce Commission, Bureau of Accounts, Washington, D.C. 20423

Monthly Report of Number of Railroad Employees

Approved by OMB ———
Expires ———
Month of report: ———, 19—
Name of carrier ———

Instructions

Mail completed form to Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, on or before the last day of the month to which the count relates.

Group No.	Reporting description	Number of employees midmonth
100	Executives, Officials and Staff Assistants	
200	Professional and Administrative	
300	Maintenance of Way and Structures	
400	Maintenance of Equipment and Stores	
500	Transportation (other than train and Engine)	
600	Transportation (Train and Engine)	
	Total	

Name and Address (Street, City, State, Zip Code)

Telephone No. (include area code) ———
Date ———

Appendix C.—Quarterly Report of Railroad Employees Service and Compensation

Full name of reporting company ———. Quarter ending ——— 19—

FORM A

Group No. and reporting group

Column (1):
100 Total Executives, Officials and Staff Assistants.
200 Total Professional and Administrative.
300 Total Maintenance of Way and Structures.
400 Total Maintenance of Equipment and Stores.
500 Total Transporation (Other than train and engine).

Column Headings

(2) Number of employees middle of Month.
(3) Number of employees who received pay during month.

Service Hours

(4) Time actually worked and paid for at straight time rates.
(5) Overtime paid for at punitive rates.
(6) Time paid for but not worked.
(7) Total time paid for.

Compensation

(8) Time actually worked and paid for at straight time rates.
(9) Overtime paid for at punitive rates.
(10) Time paid for but not worked.
(11) Total.

FORM B

600 Total Transportation (Train and engine)

Column Headings

(2) Number of employees middle of month.
(3) Number of employees who received pay during month.

Service Hours

(4) Straight time actually worked.
(5) Straight time paid for.
(6) Overtime paid for.
(7) Constructive allowances.
(8) Total.

Compensation

(9) Straight time paid for.
(10) Overtime paid for.
(11) Constructive allowances.
(12) Total.

Miles

(13) Actually run.
(14) Paid for but not run.
(15) Total number of trips for which not less than a minimum day was paid.

Appendix D.—Annual Report of Railroad Employees, Service and Compensation

Full name of reporting company ———. Miles of line covered by this report ——— Year of 19—

FORM A

Division No. and Reporting Division

Column (1):
100 EXECUTIVES, OFFICIALS, AND STAFF ASSISTANTS
101 Executives and General Officers
102 Corporate Staff Managers
103 Regional and Division Officers, Assistants and Staff Assistants
104 Transportation Officers/Managers

Column Headings

(2) Average Number of employees during year.
(3) Number of employees who received pay during year.

SERVICE HOURS

(4) Time actually worked and paid for at straight time rates.
(5) Overtime paid for at punitive rates.
(6) Time paid for but not worked.
(7) Total time paid for.

COMPENSATION

(8) Time actually worked and paid for at straight time rates.
(9) Overtime paid for at punitive rates.
(10) Time paid for but not worked.
(11) Total.

200 PROFESSIONAL AND ADMINISTRATIVE
201 Professionals (other than those reported in 101 and 102)
202 Subprofessionals
203 Auditors, Traveling Auditors or Accountants
204 General and Administrative Supervisors
205 Sales and Traffic Representatives and Agents
206 Freight and Other Claim Agents and Investigators
207 Supervising and Chief Claim Agents
208 Lieutenants and Sergeants of Police
209 Police Officers, Watchmen and Guards (Except Crossing and Bridge)
210 Inspectors (Except Maintenance of Way and Equipment), Other Investigators, Examiners, Instructors, and Other Agents (Except Station Agents)
211 Buyers, and Sales Agents
212 Clerical Technicians and Clerical Specialists
213 Office Machine and Data Equipment Operators
214 Secretaries, Stenographers, and Typists
215 General and Other Clerks (excluding yard clerks and crew dispatchers)
216 Telephone and Switchboard Operators
217 Building and Office Attendants
218 Messengers and Office Persons
219 Motor Vehicle Operators

300 MAINTENANCE OF WAY AND STRUCTURES
301 Supervisors, Maintenance of Way, Structures, Communication and Signals
302 Maintenance of Way, Structures, Communication and Signals, and Scale Inspectors
303 Bridge and Building Gang Foreman
304 Bridge and Building Carpenters
305 Bridge and Building Ironworkers
306 Bridge and Building Painters
307 Masons, Bricklayers, Plasterers, and Plumbers
308 Bridge and Building Helpers and Apprentices
309 Bridge and Building Gang and Bridge and Building Department Laborers
310 Track Gang Foreman (Extra Gang work train laborers)
311 Gang or Section Foreman
312 Extra Gang Laborers
313 Section Laborers
314 Machine Operators
315 Gang Foremen, Communications and Signals
316 Signalmen and Signal Maintainers
317 Linemen, Groundmen and communications Craftsman
318 Assistant Signalmen and Assistant Signal Maintainers
319 Signal Helpers and Signal Maintainer Helpers
320 Camp Car Cooks

400 MAINTENANCE OF EQUIPMENT AND STORES
401 Supervisors and General Foremen, Maintenance of Equipment
402 Supervisors and General Foremen, Materials and Stores
403 Equipment, Shop, Electrical Inspectors
404 Materials and Supplies Inspectors
405 Storekeeper
406 Gang Foremen, Maintenance of Equipment
407 Blacksmiths
408 Boilermakers
409 Carmen (Freight)
410 Carmen (Other)
411 Electrical Workers (A)
412 Electrical Workers (B)
413 Electrical Workers (C)
414 Machinists
415 Sheet Metal Workers
416 Skilled Trades, Helpers, Maintenance of Equipment and Stores
417 Apprentices, Maintenance of Equipment and Stores
418 Coach Cleaners
419 Laborers: Shops, Enginehouses, and Power Plants
420 Gang Foremen, Materials and Stores
421 Equipment Operators and General Laborers, Materials and Stores
422 Stationary Engineers
423 Stationary Firemen

500 TRANSPORTATION, OTHER THAN TRAIN AND ENGINE
501 Transportation Supervisor and Chief Train Dispatcher
502 Train Dispatchers
503 Station, Freight and Passenger Agents
504 Chief Operators and Wire Chiefs
505 Clerk Operators, Towerman and Train Directors
506 Station Masters and Assistants, Supervising Baggage Agents, Baggage Agents and Assistants
507 Baggage, Parcel Room and Station Attendants
508 General and Assistant General Foremen, Stations, Warehouses, Grain Elevators and Docks
509 Gang Foremen, Stations, Warehouses, Grain Elevators and Docks
510 Grain Elevator, and Dock Laborers
511 Station, and Warehouse Laborers
512 Truckers (Station, Warehouse and Platforms)
513 Food and Lodging Manager and Supervisors
514 Transportation and Dining-Service Inspectors
515 Waiters and Kitchen Helpers (Restaurant and Dining Car)
516 Chefs and Cooks (Restaurant and Dining Car)
517 Marine Officers and Workers and Shore Workers
518 Train Attendants
519 Bridge Operators and Helpers
520 Bridge and Crossing Flagmen and Gatemen
521 Yard Clerks
522 Crew Dispatchers
523 Yardmasters and Assistant Yardmasters

FORM B

600 TRANSPORTATION, TRAIN AND ENGINE
601 Switchtenders
602 Car Retarder Operators and Ground Service Employees
603 Outside Hostlers
604 Outside Hostler Helpers
605 Inside Hostler
606 Road Passenger Conductors
607 Assistant Road Passenger Conductors and Ticket Collectors
608 Road Freight Conductors (Through Freight)
609 Road Freight Conductors (Local and Way Freight)
610 Road Passenger Baggageperson
611 Road Passenger Brakemen and Flagmen
612 Road Freight Brakemen and Flagmen (Through Freight)
613 Road Freight Brakemen and Flagmen (Local and Way Freight)
614 Yard Conductors and Yard Foreman
615 Yard Brakemen and Yard Helpers
616 Road Passenger Engineers and Motormen
617 Road Freight Engineers (Through Freight)
618 Road Freight Engineers (Local and Way Freight)
619 Yard Engineers
620 Road Passenger Firemen and Helpers
621 Road Freight Firemen and Helpers (Through Freight)
622 Road Freight Firemen and Helpers (Local and Way Freight)
623 Yard Firemen and Helpers

Column Headings

(2) Average Number of employees during year.
(3) Number of employees who received pay during year.

SERVICE HOURS

(4) Straight time actually worked.
(5) Straight time paid for.
(6) Overtime paid for.
(7) Constructive allowances.
(8) Total

COMPENSATION

(9) Straight time paid for.
(10) Overtime paid for.
(11) Construction allowances.
(12) Total

MILES

(13) Actually run.
(14) Paid for but not run.
(15) Total number of trips for which not less than a minimum day was paid.

[FR Doc. 82-32346 Filed 11-29-82; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 230
Tuesday, November 30, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes to make a change in regulations relating to the probationary period for managers and supervisors to eliminate an unintended obligation to promote an employee who moves into a lower grade supervisory position and then fails to complete the required probationary period. This change is necessary to correct an illogical situation, i.e. the promotion of an unsuccessful supervisor or manager.

DATE: Comments must be received on or before January 31, 1983.

ADDRESS: Send or deliver comments to: Office of Policy Analysis and Development, Office of Personnel Management, 1900 E Street NW., Room 6526, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:
Ellen Russell (202) 632–6817.

SUPPLEMENTARY INFORMATION:

The required probationary period for managers and supervisors was enacted in 1978 to insure that only proven performers were retained in these key positions. The statute (5 U.S.C. 3321) provides that a new supervisor or manager who fails to complete the probationary period be returned to a position of no lower grade and pay than the position from which transferred, assigned or promoted. The law and OPM's implementing regulations did not contemplate what would result from unsuccessful completion of the probationary period after *demotion* into a supervisory position. Promoting an employee who fails the probationary period back to his or her former grade would be contrary to the intent of 5 U.S.C. 3321 and also contrary to sound management principles. We are, therefore, proposing a regulation change to require agencies to reassign, rather than promote, employees who fail to complete the probationary period after having been demoted (voluntarily or involuntarily) to supervisory or managerial positions. This regulation change does not affect an agency's authority to reassign an employee serving a probationary period for managers or supervisors when the reassignment is for reasons unrelated to performance as a supervisor or manager.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

PART 315—[AMENDED]

Accordingly, the Office of Personnel Management proposes to amend Title 5, Code of Federal Regulations, by revising § 315.907 to read as follows:

§ 315.907 Failure to complete the probationary period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in paragraph (b) of this section, to a position in the agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

(b) An employee who is demoted into a lower grade supervisory or managerial position voluntarily or involuntarily, and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period, is entitled to be assigned to a position in the agency at the same grade and pay as the supervisory or managerial position.

(c) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.

(5 U.S.C. 3321)

[FR Doc. 82-32673 Filed 11-29-82; 8:45]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Frozen Leafy Greens [1]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The purpose of this proposed rule is to revise the voluntary United States Standards for Grades of Frozen Leafy Greens (including spinach). The proposed rule was developed by the U.S. Department of Agriculture at the request of the frozen vegetable industry. The proposed rule would (1) increase the allowance for torn leaves to accommodate the use of automatic filling machines in the processing of frozen spinach; (2) combine frozen spinach and frozen leafy greens into one standard while considering differences in character; (3) convert the current variables (score points) standards to attributes type standards; (4) replace dual grade nomenclature with single letter grade designations; and (5) include new forms of product in the grade standards (pureed spinach and other market accepted "types" of frozen leafy greens). Its effect would be to improve the standards, and promote orderly and efficient marketing.

DATE: Written comments must be received on or before January 31, 1983.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

Federal Register and will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:
Mr. Melvin J. Horst, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6247.

SUPPLEMENTARY INFORMATION:

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Agricultural Marketing Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The current voluntary grade standards for frozen spinach have been in effect since September 7, 1964. The current voluntary grade standards for frozen leafy greens (other than spinach) became effective July 1, 1957. During the 1950's and 1960's, the leafy greens (including spinach) were packaged into their primary containers by hand. Product filled in this manner showed very little evidence of machine damage (ragged and torn leaves and stems). Reflecting processing practices prevalent when they were developed, the current grade standards require a lower quality designation for leafy greens that are ragged and torn.

During the 1970's, machinery became available to package leafy greens. The use of automatic fillers is becoming commonplace in spinach processing plants. Although product can be processed more efficiently using machinery, the spinach will show the effects of "tearing." Tearing of the product, however, is "cosmetic" and does not affect the eating quality or nutritional value of the leafy greens (including spinach).

This proposed revision of the voluntary grade standards would change the quality requirements of the product with respect to appearance of the "leaf" style by permitting more slightly torn leaves and partially crushed stems. It would accommodate the present day industry practice of using automatic filling machines.

While the frozen spinach standards and the frozen leafy greens standards contain similar narrative text, there are differences in the relative importance of two of the three quality factors. The quality factor of "character" which refers to the tenderness and texture of the leaves and stems is determined to be more significant in the quality evaluation of leafy greens than in the quality evaluation of spinach. Consequently, weight given to the factor of character was increased while weight given to the factor of "defects," which refers to the damaged areas on the leaves and stems, is reduced in relative importance in the leafy greens standards.

This proposed revision would combine frozen spinach and frozen leafy greens into one standard by considering the differences in character for the varietal types of leafy greens. Spinach would be included as a "type" of leafy green.

The current grade standards for frozen spinach and frozen leafy greens (other than spinach) specify numerical scoring systems (0 to 100 points) for assigning quality grades to the products.

This proposed revision would change the procedure for assigning a quality grade and eliminate the numerical scoring system. This system for determining whether the product quality meets or fails a designated grade level is called "attributes sampling." Under this system, the quality of the product is compared with the minimum quality permitted in the intended or designated grade. If the quality is as good as, or better than, the minimum quality permitted, the product would be assigned that grade. If the quality of the product is not as good as the minimum quality permitted, it would be assigned a lower grade.

Suitable manuals to guide the user of the "attributes sampling" system are available from the person designated as the contact for further information on this proposal.

The existing grade standards for frozen spinach and frozen leafy greens provide two names for each quality grade level. Currently, "Grade A" and "Fancy" are used to describe the higher of two quality grade levels, and "Grade B" and "Extra Standard" the lower quality grade level acceptable in the marketplace. This proposed action would change the grade names by deleting the terms "Fancy" and "Extra Standard" and retaining only the single letter grades of "Grade A" and "Grade B."

This action would also incorporate grades for new types of frozen leafy greens—"pureed" style spinach and other "market accepted" types of frozen leafy greens.

List of Subjects in 7 CFR Part 52

Agricultural Marketing Service, Processed fruits and vegetables, Food grades and standards.

PART 52—[AMENDED]

In consideration of the foregoing, it is proposed to amend 7 CFR 52 as set forth below.

§§ 52.1921-52.1931 [Reserved]

1. Subpart—United States Standards for Grades of Frozen Spinach (7 CFR Part 52) would be revoked in its entirety and §§ 52.1921 through 52.1931 would be reserved. The Table of Contents would be amended to reflect this change.

2. Subpart—United States Standards for Grades of Frozen Leafy Greens (7 CFR Part 52) would be revised to read as follows, and the Table of Contents would be revised accordingly:

Subpart—United States Standards for Grades of Frozen Leafy Greens

Sec.

52.1371 Product description.
52.1372 Types.
52.1373 Styles.
52.1374 Definition of terms.
52.1375 Recommended sample unit sizes.
52.1376 Grades.
52.1377 Factors of quality.
52.1378 Classification of defects.
52.1379 Tolerance for defects.
52.1380 Sample size.
52.1381 Quality requirements.

Subpart—United States Standards for Grades of Frozen Leafy Greens

§ 52.1371 Product description.

"Frozen leafy greens" means the frozen product prepared from the clean, sound, succulent leaves and stems of any one of the plants listed under § 52.1372 by sorting, trimming, washing, blanching, and properly draining. The product is processed by freezing and maintained at temperatures necessary for its preservation. Any functional, optional ingredient(s) permissible under the Federal Food, Drug, and Cosmetic Act may be used to acidify and/or season the product.

§ 52.1372 Types.

(a) Beet greens.
(b) Collards.
(c) Dandelion greens.

(d) Endive.
(e) Kale.
(f) Mustard greens.
(g) Spinach.
(h) Swiss Chard.
(i) Turnip greens.
(j) Any other "market accepted" leafy green.

§ 52.1373 Styles.

(a) *Leaf* consists substantially of the leaf, cut or uncut, with or without adjoining portion of the stem.

(b) *Chopped* consists of the leaf with or without adjoining portion of the stem that has been cut into small pieces less than approximately 20 mm (0.78 in) in the longest dimension but not comminuted to a pulp or a puree.

(c) *Pureed* consists of the leaf with or without adjoining portion of the stem that has been comminuted to a pulp or a puree.

§ 52.1374 Definitions of terms.

As used in these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Acceptable Quality Level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished* means any unit affected by discoloration or other means to the extent that the appearance or eating quality is adversely affected. Each 4 cm^2 in leaf style or each 2 cm^2 in chopped and pureed styles (aggregate area measurement) is counted as one defect.

(c) *Character (other than pureed style).* (1) *Good character* means:

(i) The frozen spinach is tender upon cooking.

(ii) The frozen leafy greens, other than spinach, may be slightly tough upon cooking.

(2) *Reasonably good character* means:

(i) The frozen spinach is reasonably tender upon cooking.

(ii) The frozen leafy greens, other than spinach, may be moderately tough upon cooking.

(3) *Poor character* means the frozen leafy greens fail the requirements for "reasonably good character."

(d) *Defect* (or defective) means any nonconformance of a unit(s) of product from a specified requirement of a single characteristic.

(e) *Extraneous vegetable material (EVM).* (1) Group I—Green, fine, tender string-like blades and stems of grass and weeds.

(2) Group II—Green, coarse grass and weeds.

(3) Group III—Grass and weeds other than green.

(f) *Flavor and ordor. "Normal flavor and odor"* means the frozen product is free from objectionable flavors and odors of any kind after cooking.

(g) *Root crown* means the solid area of the leafy green plant between the root and attached leaves or clusters of leaves.

(h) *Root stub* means any portion of the root whether or not leaves are attached.

(i) *Sample unit* means the amount of product to be used for grading. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container;

(3) A combination of the contents of two or more containers;

(4) A portion of unpacked product.

(j) *Seed head* means the seed-bearing portion of the leafy green plant that is longer than 2.5 cm (1 in) or that is objectionable in appearance.

(k) *Stem material* (in leaf and chopped styles of spinach only) means the portion of the plant located between the stalk or root crown and the point of attachment to the leaf.

(l) *Unit* means any whole or portion of a leaf or stem from the leafy green plant.

§ 52.1375 Recommended sample unit sizes.

(a) Leaf style—300 g (10.6 oz).
(b) Chopped style—75 g (2.65 oz).
(c) Pureed style—75 g (2.65 oz).

§ 52.1376 Grades.

(a) *U.S. Grade A* is the quality of frozen leafy greens that: (1) Meets the following prerequisites in which the leafy greens:

(i) Have similar varietal characteristics;

(ii) Have a good overall brightness as a mass;

(iii) Have a normal flavor and odor;

(iv) Have a good character (other than pureed style);

(v) May have stem material (leaf style spinach only) that does not exceed an AQL of 20.0;

(vi) May have stem material (chopped style spinach only) that slightly affects the appearance or eating quality;

(vii) May have blemished areas that do not exceed an AQL of 20.0.

(2) Is within the limits for defects as classified in Table I and specified in table II.

(b) *U.S. Grade B* is the quality of frozen leafy greens that: (1) Meets the following prerequisites in which the leafy greens:

(i) Have similar varietal characteristics;

(ii) Have a fairly good overall brightness as a mass;

(iii) Have a normal flavor and odor;

(iv) Have a reasonably good character (other than pureed style);

(v) May have stem material (leaf style spinach only) that does not exceed an AQL of 25.0;

(vi) May have stem material (chopped style spinach only) that materially affects the appearance or eating quality;

(vii) May have blemished areas that do not exceed an AQL of 40.0.

(2) Is within the limits for defects as classified in Table I and specified in Table II.

(c) *substandard* is the quality of frozen leafy greens that fails to meet the requirements of *U.S. Grade B.*

§ 52.1377 Factors of quality.

The grade of frozen leafy greens is based on meeting the requirements for the following quality factors:

(a) *Prerequisite quality factors:* (1) Varietal characteristics;

(2) Brightness;

(3) Flavor and odor;

(4) Character (other than pureed style);

(5) Stem material (leaf and chopped styles of spinach only);

(6) Blemished.

(b) *Classified quality factors:* (1) Root crowns (leaf style only);

(2) Root stubs (leaf style only);

(3) Seed heads (leaf style only);

(4) Extraneous vegetable material.

§ 52.1378 Classification of defects.

All defects are classified as minor, major, severe, or critical. Each "X" in Table I represents "one (1) defect."

TABLE I.—CLASSIFICATION OF DEFECTS

Quality factor and defect	Classification			
	Minor	Major	Severe	Critical
Leaf style				
Root crowns: Each piece			X	
Root stubs: Each piece				X
Seed heads: Each piece			X	
Extraneous vegetable material:				
Group I (each 2.5 cm increment)	X			
Group II (each 2.5 cm increment)		X		
Group III (each 2.5 cm increment)				X

TABLE I.—CLASSIFICATION OF DEFECTS—Continued

Quality factor and defect	Classification			
	Minor	Major	Severe	Critical
Chopped; pureed styles				
Extraneous vegetable material:				
Group I (each 2.5 cm increment)	X			
Group II (each 2.5 cm increment)		X		
Group III (each 2.5 cm increment)				X.

§ 52.1379 Tolerances for defects.

TABLE II.—ALL STYLES

	total [1]	Major	Severe	Critical
Grade A: AQL [2]	15.0	6.5	2.5	0.4
Grade B: AQL [2]	25.0	12.5	6.5	1.5

[1] Total = Minor + Major + Severe + Critical.
[2] AQL expressed as defects per hundred units.

§ 52.1380 Sample size.

The sample size to determine meeting the requirements of these standards shall be as specified in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1–52.83) for lot grading and on-line grading, as applicable.

§ 52.1381 Quality requirements.

(a) *Lot grading.* A lot of frozen leafy greens is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.1376 are met; and

(2) The Acceptable Quality Levels (AQL) in Table II are not exceeded.

(b) *On-line grading.* A portion of production is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.1376 are met; and

(2) The Acceptable Quality Levels (AQL) in Table II are not exceeded.

(c) *Single sample unit.* Each single sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.1376 are met; and

(2) The Acceptable Quality Levels (AQL) in Table II are not exceeded.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on November 18, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82-32584 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 232]

Food Stamp Program; Recertification of Eligible Households

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations for the Food Stamp Program to implement a provision of the Food Stamp and Commodity Distribution Amendments of 1981 which is intended to give State agencies more flexibility as to when to notify households of the expiration of their certification periods. In addition, the Department proposes related changes based on recommendations of the Food Stamp Regulatory Relief Task Force. The changes based on the Task Force recommendations would reduce administrative burdens at the State and local levels by providing additional flexibility during the recertification process.

DATE: Comments on this proposed rulemaking must be received on or before January 31, 1983 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified "not major". The proposed rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this proposed rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has also been reviewed with regard to the requirements of Pub. L. 96–354, and Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities. The proposal would implement a change mandated by the Food Stamp and Commodity Distribution Amendments of 1981 and several related changes based on recommendations from the Food Stamp Regulatory Relief Task Force. These changes would reduce administrative burdens at the State and local levels by providing increased flexibility during the recertification process. State and local social service agency personnel would experience greater administrative flexibility through increased control over the allotment of their time on the various tasks associated with the recertification of eligible households. Individuals participating in the Program would also be affected in that these changes would increase their responsibility for complying with the recertification requirements in order to obtain uninterrupted benefits.

Note.—This regulation does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Background

The Food Stamp and Commodity Distribution Amendments of 1981 (Public Law 97–98, enacted on December 22, 1981) contained a provision (Section 1318) which removed the existing requirement that State agencies notify households immediately prior to or at the start of the last month of their current certification period that it is about to expire. This rulemaking contains proposed regulations to implement this provision of the Food Stamp and Commodity Distribution Amendments of 1981, thereby giving State agencies more flexibility as to

when to notify households of the expiration of their certification periods. The Food Stamp Act Amendments of 1982 (Pub. L. 97–253, enacted on September 8, 1982) contained a provision which requires State agencies to prorate to the day of application the household's food stamp benefits following any period during which the household was not certified for participation. This provision of the Food Stamp Act Amendments of 1982 is being addressed in a separate rule which will be issued in the near future. However, the Department has decided to discuss the change in this proposed rulemaking to assist the reader in understanding the full impact of anticipated changes on the Program's recertification procedures. The 1982 Amendment change would place more responsibility on the household for preventing a break in benefits between certifications. In addition, the proposed rulemaking would implement several related changes which resulted from consideration of recommendations made by the Food Stamp Regulatory Relief Task Force. The Task Force met in work groups consisting of State and local agency representatives, and USDA employees from the Food and Nutrition Service and Office of the Inspector General. The Task Force's suggested changes are intended to simplify the administration of the Program, to provide for increased State flexibility, and to improve the Program's integrity.

At the time of certification, each food stamp household must be provided with a written notice of the length of its certification period. When the certification period expires, the household's eligibility is terminated. Further entitlement to food stamps cannot be established without recertification, which means application by the household, an interview, verification, and a subsequent determination of eligibility by the State agency. If the household makes a timely application for continued participation, the certification process and notification of the household of its eligibility or ineligibility must occur prior to the expiration date of the current certification period.

The Food Stamp Program's recertification process differs significantly from the procedures used under the Aid to Families with Dependent Children (AFDC) Program. Once applicants have been determined to be eligible for an AFDC grant, they will continue to receive benefits until subsequently found to be ineligible for assistance. The Food Stamp Program is unique in requiring affirmative action by recipients to renew their eligibility. By merely failing to refile, benefits will automatically lapse without further action or notification required by the State agency. Therefore, the legislation recognized the special need to provide adequate notice to food stamp households of the impending termination of benefits.

The Program's overall approach to redeterminations of eligibility resulted from a stipulation the Department entered into with the plaintiffs to settle the *Basel v. Butz* court suit on May 13, 1977. In this stipulation, the Department agreed to provide all households with timely notice of expiration of the certification period, and to establish standards for filing and processing applications for subsequent certification so that eligible households would receive uninterrupted benefits. (Other aspects of the stipulation, including that a household would be provided a notice of adverse action and an opportunity for a fair hearing and continued benefits if the household's benefits are reduced or terminated as a result of action taken on an application for recertification, were superseded by enactment of the Food Stamp Act of 1977 on September 29, 1977). Among the standards established by the Department through implementation of regulations to comply with this stipulation was that an eligible household which makes timely application must be provided an opportunity to participate by its normal issuance cycle in the month following the end of its certification period. The State agency was required to meet this deadline even if extraordinary issuance methods had to be used. The State agency also had to approve or deny timely applications for recertification by the end of the household's current certification period. The household could not be required to appear for an interview before the last month of its current certification period, and it was entitled to restoration of any benefits lost due to the State agency's failure to process a timely application on schedule. In addition, the State agency was required to provide for case-by-case determinations of good cause for household failure to file a timely application or otherwise complete the certification process in a timely manner and, if good cause was found, the household was entitled to restoration of any lost benefits.

The State agency is currently required to provide most households with a notice of expiration immediately prior to or at the start of the last month of the certification period. The household then has until the fifteenth day of the last month of the certification period to make timely reapplication and be guaranteed uninterrupted benefits (i.e., be provided an opportunity to participate by its normal issuance date in the month following the end of its certification period), if otherwise eligible. These timeframes for recertification have caused severe problems for some State agencies. Particularly troublesome is the requirement that State agencies determine eligibility and notify the household before the current certification period expires. Under certain circumstances, such as when households apply just prior to or on the last day for timely reapplication, the present requirements pose a significant administrative burden on many State agencies.

The provision of the Food Stamp and Commodity Distribution Amendments of 1981 which mandates household notification prior to the start of the last month of an expiring certification period, rather than immediately prior to or at the start of the last month, is intended to provide State agencies more flexibility in the use of its administrative resources. It also will have the effect of placing more of the burden for timely reapplication in the household by requiring that the household be more aware of when its certification expires and when reapplication is necessary. The Department, however, is concerned that households not be provided notice too early to effectively trigger any preparation for reapplying. Therefore, the proposed rulemaking would incorporate the Food Stamp Regulatory Relief Task Force's recommendation that State agencies be allowed to establish their own timeframes for sending the household notice of expiration, as long as it is not sent earlier than 30 days prior to the start of the last month of the certification period. This change would permit State agencies to function more efficiently and, at the same time prevent the notification of households too far in advance to achieve the intended purpose.

Current Food Stamp Program regulations require the State agency to provide notice of expiration at the time of certification under certain circumstances. Since some households are certified for only one month or initially certified for two months during the month following the month of application, it is impossible for the State agency to provide such households notice of expiration by the first day of the last month of the certification period. The proposed rulemaking would

require State agencies to provide noice of expiration at certification for any household certified for one month, and give State agencies the option of providing notice at certification for any household certified for two or three months. The Department believes that providing notice of expiration at the time of certification would increase the State agency's ability to effectively deal with its recertification workload and would not adversely affect households with short certification periods. (See 7 CFR 273.14(b)(2)).

The provision of the Food Stamp Act Amendments of 1982 which requires that benefits be prorated from the day of application following any period during which the household was not certified for participation will place more responsibility on the household for timely reapplication. Current Food Stamp Program regulations require proration of benefits only during the first month for which an allotment is issued to a household or the first month for which an allotment is issued to a household following any period of more than a month during which the household was not certified for participation. Pursuant to the 1982 legislation, a separate rule soon to be issued will require that is a household reapplies after the last day of the certification period, the benefits will be prorated. As a result, the household's benefits will be prorated any time there is a break in the household's participation in the Program. (See 7 CFR 273.14 (f)).

The Department is also proposing other changes which resulted from consideration of related recommendations from the Food Stamp Regulatory Relief Task Force. The Task Force suggested changes which would simplify the Program's recertification procedures and, thereby, lead to more accurate determinations of eligibility. These recommendations were considered by the Department in view of the Program's overall approach to redeterminations of eligibility. In particular, the Department weighed each recommendation against the need for recipients to take some affirmative action to continue receiving benefits at the end of the certification period. Also considered was the responsibility of administering agencies to provide the household a reasonable opportunity to comply with Program requirements. The resulting proposals would continue the trend initiated with the Food Stamp and Commodity Distribution Amendments of 1981 change by further increasing the household's responsibility to timely reapply and complete the recertification process, while ensuring tha the household's rights to reasonable notice and opportunity to act to continue receiving benefits are safeguarded. All of the Task Force's recommendations relative to the recertification of eligible households were considered by the Department and are addressed in the remainder of the preamble to this proposed rulemaking.

The following chart outlines the current regulatory requirements governing recertifications, describes any relasted task Force recommendations,and explains the changes being proposed by the Department:

Current regulatory requirement	Task force recommendation	Proposed change
A. Providing Noitice of Expiration		
1. State agency must provide notice of expiration at time of certification for households certified for one month or certified for two months during month following the month of application.		1. State agency would provide notice of expiration at time of certification for any household certified for one month. And the State agency would have the option of providing notice at time of certification for any household certified for two or three months.
2. State agency must provide the household notice of expiration at least one day, but no more than 15 days, prior to the start of the last month of the household's certification period for all other households.	Allow State agency to establish its own timeframes for sending the household notice of expiration, as long as the notice is not sent earlier than 30 days prior to the start of the last month of the household's certification period.	2. State agency would establish timeframes for providing the household notice of expiration, and would ensure that the notice is provided at least one day, but no more than 30 days, prior to the start of the last month of the household's certification period for all other households. (See 7 CFR 273.14(b)(2)).
B. Notice of Expiration Form		
State agency must use the notice of expiration form designed by FNS unless FNS approves a deviation.	Allow State agency more flexibility in designing the notice of expiration.	Each State agency would develop a notice of expiration form based on requirements in Program's regulations. FNS would make available a model form which any State agency could choose to use. Deviations from the FNS model form would not require FNS approval. (See 7 CFR 273.14(b)(3)).
C. Uninterrupted Benefits		
Household is guaranteed uninterrupted benefits if it timely reapplies and is determined eligible to participate. The household loses its right to uninterrupted benefits, however, if it fails to appear for an interview scheduled after filing a timely reapplication.	Household should be guaranteed uninterrupted benefits only if it timely reapplies and submits all necessary verification within timeframes established by the State agency.	Household would continue to be guaranteed uninterrupted benefits if it timely reapplies and is determined eligible to participate. However, the household would lose its right to uninterrupted benefits if it fails to appear for any interview scheduled on or after the date the application is timely filed or fails to submit all necessary verification within timeframes established by the State agency. (See 7 CFR 273.14(c)).
D. Scheduling and Attending an Interview		
Household must attend any interview scheduled on or after the date the application is timely filed to retain its right to uninterruputed benefits, unless it has good cause. State agency may schedule an interview before the last month of a household's current certification period, but the State agency cannot deny the household for failure or refusal to appear. If the household does not appear or no interview has previously been scheduled, State agency must schedule an interview between receipt of a timely application and the end of the household's current certification period. State agency must schedule another interview whenever a household fails to appear for any interviews scheduled prior to the date the application is timely filed.	Allow State agency to schedule an interview up to 15 days prior to the start of the last month of the household's certification period. Remove the prohibition against denying a household for failure or refusal to appear for an interview scheduled more than 30 days before the end of its current certification period.	Household would be required to attend any interview scheduled on or after the date the application is timely filed to retain its right to uninterrupted benefits. State agency would continue to be allowed to schedule an interview before the date the application is timely filed, and the State agency would not be able to deny the household at that point for failure to appear. If the household does not appear but requests that another interview be scheduled or no previous interview was scheduled, State agency would schedule an interview before the end of the household's current certification period. Anytime a household fails to appear for an interview, the State agency would not have to schedule any further interviews unless the household requests that another interview be scheduled. (See 7 CFR 273.14(c)(2)).

Current regulatory requirement	Task force recommendation	Proposed change
E. Submitting Necessary Verification State agency must receive all necessary verification in order to determine the household eligible or ineligible and notify the household of its determination by the end of the household's current certification period.	Allow State agency to establish timeframes for the receipt of timely verification.	State agency would be allowed to establish timeframes for the submission of necessary verification, provided that a household is given at least 10 days from the date of the State agency's initial request for any missing verification. In addition, the State agency would be prohibited from denying uninterrupted benefits to any household which timely reapplies for failure to submit any missing verification prior to the date the household submits a timely reapplication. (See 7 CFR 273.14(c)(3)).
F. State Agency's Determination 1. State agency must treat any application for recerjification not submitted in a timely manner as an application for initial certification (the application processing requirements at 7 CFR 273.2(g)(1) specify that the State agency must provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but no later than 30 calendar days following the date the application was filed).	1. Specify that untimely reapplications must be processed as initial applications with a 30-day standard..	1. The regulations would clarify that the State agency must act to insure that any eligible household which did not submit a timely reapplication is provided an opportunity to participate within 30 days after the application is filed.
2. If an eligible household timely reapplies, but fails to attend an interview or submit all required verification by the end of its current certification period, the household is normally denied on or about the end of the certification period. In some instances, particularly when the household has timely reapplied and attended an interview but was unable to supply all the required verification in time for the State agency to arrive at a determination prior to the end of the current certification period, the household's application is held pending rather than denied..	2 Specify that if a household timely reapplies but fails to submit timely verification, the State agency has the option of processing the application by the end of the household's current certification period or within the 30-day standard..	2. If an eligible household timely reapplies, but fails to attend any interview scheduled on or after the date the application is timely filed or to submit all required verification within the State agency's timeframes, the State agency would provide the household an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period or within 30 days after the application is filed. (See 7 CFR 273.14(f)).
G. Restoration of Lost Benefits Household is entitled to restoration of lost benefits if unable to participate in month following the end of its certification period due to failure to timely reapply, to appear for an interview scheduled after the application is timely filed, or to provide necessary verification for good cause.	Provide no restoration of lost benefits for households which fails to timely reapply or to submit timely verification for good cause.	Household would not be entitled to restoration of lost benefits if unable to participate in month following the end of its certification period due to failure to timely reapply, to appear for any interview scheduled on or after the date the application is timely filed, or to submit all required verification within the State agency's timeframes, regardless of the reasons.

And finally, the proposed rulemaking would revise the requirements governing the content of the notice of expiration to reflect these changes in the Program's recertification procedures. The fact that a housefhold would lose its right to uninterrupted benefits if it fails to appear for any interview scheduled on or after the date the application is timely filed or to submit any missing verification with the State agency's timeframes necessitates that the household be informed of the possible consequences of such failures. The household also needs to be made aware of the fact that if it fails to appear for an interview scheduled anytime during the recertification process that the State agency would not schedule any further interviews unless the household requests that another interview be scheduled. Therefore, the proposed rule would require that the notice of expiration include the date by which the household must appear for an interview and the number of days the household has for submitting missing verification, if the State agency informs it that any verification is missing, in order to receive uninterrupted benefits. In addition, the current requirement that the notice of expiration inform the household of the consequences of failure to comply with the notice of expiration would be expanded to include the consequences of failure to appear for a scheduled interview or to submit any missing verification within the State agency's timeframes. Since the proposed rulemaking would eliminate the good cause provision for household failure to make timely application, or to otherwise complete the certification process in a timely manner, the household would no longer be entitled to a fair hearing if the State agency refuses to accept as good cause the household's reasons for these failures. However, the household would continue to be entitled to a fair hearing on other State agency actions which affect the household's participation in the Program. Therefore, the proposal would continue to require that the notice of expiration inform the household of its right to a fair hearing. (See 7 CFR 273.14(b)(3)).

List of Subject

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Records, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, it is proposed that 7 CFR Parts 272 and 273 be amended as follows:

PARTS 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new paragraph (52) is added to paragraph (g) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(52) *Amendment 232.* State agencies shall implement the program changes contained in Amendment 232 relative to recertification of eligible households no later than the first day of the month 120 days following publication of the final rule.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. Section 273.14 is revised to read as follows:

§ 273.14 Recertification.

(a) *Action on applications for recertifications.* The State agency shall complete the application process and approve or deny timely applications for recertification prior to the end of the

household's current certification period and shall provide eligible households with an opportunity to participate by the household's normal issuance cycle in the month following receipt of a timely application. However, the household shall lose its right to uninterrupted benefits for failure to attend any interview scheduled on or after the date the application was timely filed or to submit all necessary verification within timeframes established by the State agency. And, the State agency shall have the option to approve or deny the household and provide the household an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period or within 30 calendar days after the date the application was filed if the household loses its right to uninterrupted benefits due to such failures. The State agency shall not continue benefits due to the household beyond the end of the certification period unless the household has been recertified. The joint processing requirements in § 273.2(j) for PA and GA households shall continue to apply to applications for recertification.

(b) *Notice of expiration.* (1) The State agency shall provide each household with a notice of the expiration of its certification prior to the start of the last month of the household's certification period. PA and GA households whose applications were jointly processed for food stamps and PA or GA benefits in accordance with § 273.2(j) need not receive notices of expiration if they are recertified for food stamps at the same time as their PA or GA redetermination, provided that the redetermination occurs prior to the last month of their food stamp certification period as assigned in § 273.10(f)(2).

(2) The State agency shall establish timeframes for providing notices of expiration to households that must receive such notices. These timeframes shall ensure that any household certified for one month is provided notice of expiration at the time of certification. The State agency may also provide any household certified for two or three months with a notice of expiration at the time of certification. The State agency's timeframes shall ensure that any other household is provided notice of expiration at least one day, but no more than 30 days, prior to the start of the household's last month of certification.

(3) The notice of expiration shall inform the household of the date the current certification period ends; the date by which the household must file an application to receive uninterrupted benefits; the fact that the household must appear for any interview scheduled on or after the date the application is timely filed to receive uninterrupted benefits; the number of days the household has for submitting missing verification, if the State agency informs it that any verification is missing, to receive uninterrupted benefits; the household's right to request an application and have the State agency accept an application as long as it is signed and contains a legible name and address; the address of the office where the application must be filed; the consequences of failure to comply with the notice of expiration; the household's right to file the application by mail or through an authorized representative; and the household's right to request a fair hearing. The notice shall also inform recipients that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration (SSA). Each State agency shall develop a form for notifying a household of the expiration of its certification. The form shall contain the information required by this section. A model form for notifying a household of the expiration of its certification is available from FNS for use by any State agency. The State agency is encouraged to include an application form and/or an appointment for an interview with the notice of expiration.

(c) *Uninterrupted benefits.* The State agency shall provide an opportunity to participate by the household's normal issuance cycle to any household determined eligible after the household timely filed an application. However, the household shall lose its right to uninterrupted benefits for failure to attend any interview scheduled on or after the date the application was timely filed or to submit all necessary verification within timeframes established by the State agency. Although a household shall lose its right to uninterrupted benefits for such failures, the household shall not be denied at that point unless it has refused to cooperate. And, the State agency may choose to provide uninterrupted benefits to a household determined eligible despite such failures.

(1) *Filing a timely application.* Households certified for one or two months shall have 15 days from the date the notice of expiration is received to file a timely application for recertification. All other households which submit identifiable applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification. For households consisting of applicants or recipients of SSI which apply for food stamp recertification at offices of the SSA in accordance with § 273.2(k)(l)(ii), an application shall be considered filed for normal processing purposes when the signed application is received by SSA.

(2) *Attending an interview.* Any household receiving a notice of expiration shall attend any interview scheduled by the State agency on or after the date the application is timely filed to retain its right to uninterrupted benefits. The State agency may schedule the interview prior to the date the application is timely filed, provided the household is not denied at that point for failing to appear for the interview. The State agency shall schedule the interview on or after the date the application was timely filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview. For households certified for one or two months the State agency shall schedule the interview during the 15 days following the date the notice of expiration was provided. If the household does not appear for any interview scheduled in accordance with this section, the State agency need not initiate action to schedule any further interviews unless the household requests that another interview be scheduled.

(3) *Submitting necessary verification.* The State agency may establish timeframes within which the household must submit any required verification, provided that the household is allowed at least 10 days from the date of the State agency's initial request for the particular verification that is missing. Any State agency which chooses to establish timeframes for the submission of missing verification shall ensure that any household which timely reapplies does not lose its right to uninterrupted benefits for failure to submit any requested verification prior to the date the household submits a timely application for recertification.

(d) *State agency action on timely reapplications.* The State agency shall act to provide uninterrupted benefits to any household determined eligible after the household timely filed an application, attended an interview in accordance with the requirements in this section, and submitted all necessary verification within the State agency's timeframes. The State agency shall take action to provide uninterrupted benefits within the following time standards,

even if, to meet these standards, the State agency must provide an opportunity to participate outside of the normal issuance system:

(1) Households that were certified for one or two months and have timely filed an application, attended an interview in accordance with the requirements in this section, and submitted all necessary verification within the State agency's timeframes, shall be notified of their eligibility or ineligibility and, if eligible, provided an opportunity to participate not later than 30 calendar days after the date the household had an opportunity to obtain its last allotment.

(2) For all other households that have timely filed an application, attended an interview in accordance with the requirements in this section, and submitted all necessary verification within the State agency's timeframes, the State agency shall approve or deny the application and notify the household of its determination by the end of the current certification period. In addition, for households determined eligible, the State agency shall provide an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period. Any household not determined eligible in sufficient time to provide for issuance in the household's normal issuance cycle for the following month due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 days after the household supplies the missing verification. Households which have timely reapplied, but due to State agency error are not determined eligible in sufficient time to provide for issuance in the household's normal issuance cycle for the following month, shall receive an immediate opportunity to participate upon being determined eligible.

(e) *State agency failure to act.* State agency failure to provide an eligible household which has filed a timely application for recertification, attended an interview in accordance with the requirements in this section, and submitted all necessary verification within the State agency's timeframes, with an opportunity to participate in accordance with the above provisions shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

(f) *Household failure to act.* A household which submits a timely application for recertification shall have the right to receive uninterrupted benefits. However, a household which fails to appear for an interview in accordance with the requirements in this section or to submit any missing verification within the State agency's timeframes shall lose its right to uninterrupted benefits. Households which refuse to cooperate in providing required information shall be denied. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses need not be verified if the source has not changed and the amount has not changed by more than $25. The State agency shall act to insure that any eligible household which did not submit a timely application for recertification is provided an opportunity to participate witnin 30 calendar days after the application is filed. If the household's application for recertification is received after the household's certification period has expired, the household's benefits shall be prorated in accordance with § 273.10(a)(1)(ii). If an eligible household submits a timely application for recertification, but fails to attend an interview scheduled in accordance with the requirements in this section or to submit all required verification within the State agency's timeframes, the State agency shall either provide the household an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period or within 30 calendar days after the date the application was filed. However, if the State agency is unable to provide an eligible household with an opportunity to participate within 30 calendar days after the date the application was filed due to the time period allowed for submitting any missing verification, the State agency shall provide the household an opportunity to participate within 5 days after the date the household supplies the missing verification.

(91 Stat. 958 (7 U.S.C. 2011–2029); Sec. 1318 of Pub. L. 97–98, 95 Stat. 1282 (7 U.S.C. 2020); and Sec. 163 of Pub. L. 97–253, 96 Stat. 772 (7 U.S.C. 2017 (c)))

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamp Program)

Dated: November 22, 1982.

Robert E. Leard,

Associate Administrator.
Food and Nutrition Service.

[FR Doc. 82-32556 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 947

Irish Potatoes Grown in Modoc and Siskiyou Counties in California and in All Counties in Oregon Except Malheur County; Proposed Amendment No. 1 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed amendment to handling regulation § 947.340 (46 FR 47757) would increase the minimum size requirements for fresh market potatoes grown in Modoc and Siskiyou Counties in California and all counties in Oregon except Malheur County. The change would promote orderly marketing by making Oregon-California production area size requirements more similar to those of potato marketing orders in two adjoining States.

DATE: Comments due December 15, 1982.

ADDRESSES: Comments should be sent to: Hearing Cleark, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2615.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 947) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0112.

This proposed amendment to the rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed action will not have a significant economic impact on a substantial number of small entities. It is designed to promote orderly marketing of the Oregon-California potato crop for the benefit of producers and consumers, and would not substantially affect costs for the directly regulated handlers.

Marketing Agreement No. 114 and Order No. 947, both as amended, regulate the handling of potatoes grown in designated counties of Oregon and California. The program is effective

under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Oregon-California Potato Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in June 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary.

At its public meeting in McNary, Oreg., on June 15, 1982, the committee recommended that the regulation continue in effect again this season. After a more current appraisal of the 1982 fall potato crop, a committee member suggested that a telephone poll be taken on proposed changes to the handling regulation. During the last week in October 1982 a vote was conducted which indicated that a majority of committee members favored the recommended changes.

The committee recommended that the minimum size requirements for all varieties of fresh market potatoes grown in Districts No. 1 through 4 be increased from 1⅞ inches in diameter to 2 inches in diameter or 4 ounces minimum weight. This proposed change would make size requirements for Districts No. 1 through 4 consistent with District No. 5. Also, the proposal would make grade and size requirements of the production area more similar to those of potato marketing orders in Washington and Idaho.

The committee reported that potatoes packed in five and ten pound consumer size packages are much smaller this season than previously, giving the consumer a lower quality product. The committee believes that the proposed change would eliminate the smaller potatoes from these consumer packs and increase demand for the packs. Additionally, the committee believes that demand is so weak for the smaller potatoes that they may adversely affect prices for all potatoes.

The committee also recommended that the minimum size of U.S. No. 2 grade potatoes which may be shipped be increased from 4 ounces to 6 ounces in weight. The committee believes this increase in minimum weight would also be more acceptable to consumers.

These proposed changes would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area, thereby promoting orderly marketing and would tend to effectuate the declared policy of the act.

The proposed amendment would be effective for an indefinite period beginning January 10, 1983. The committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season in accordance with § 947.50 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before June 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of Oregon-California potatoes would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, potatoes, Oregon, California.

PART 947—[AMENDED]

It is proposed that § 947.340 *Handling regulation* (46 FR 47757), September 30, 1981) be amended by revising paragraph (b)(2) to read as follows:

§ 947.340 Handling regulation.

* * * * *

(b) *Minimum size requirements.*

(1) * * *

(2) For All Districts: All varieties—2 inches minimum diameter or 4 ounces minimum weight except that U.S. No. 2 grade be a minimum of 6 ounces in weight.

* * * * *

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

Dated: November 24, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-32663 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-03-M

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 82-022]

Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements for the Detection of Extraneous Agents in Vaccines Prepared Using Cells and Ingredients of Animal Origin; Relaxation of Testing Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would amend and update the Standard Requirements for the detection of extraneous agents in cells and ingredients of animal origin used in the making of vaccines. Such vaccines consist mostly of virus vaccines. This proposal would also relax the test requirements for tumorigenicity and oncogenicity in cells and ingredients used in making vaccines. Test procedures for detecting extraneous agents are currently codified in the general requirements for cells and igredients. Cells and ingredients of animal origin used in the production of killed virus vaccines are subject to the same test requirements as those used in live virus vaccines. This proposal would result in the relaxation of test requirements for detecting extraneous agents in cells and ingredients of animal origin used in the preparation of killed vaccines. In addition, it would clarify and update test procedures for both killed and live vaccines. Such proposed amendments would simplify and streamline future testing of vaccines prior to release

DATE: Comments must be received on or before January 31, 1983.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828–A, Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald J. Fichtner, USDA, APHIS, VS Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this

regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0579–0013.

Executive Order 12291

These proposed actions have been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and have been classified as "non-major."

The proposed rules would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Certification Under the Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a business which is independently owned and operated and is not dominant in the field of veterinary biologics manufacturing.

Alternatives

The alternatives considered are:

1. Do not amend the present regulations. This would continue known iniquities in the present regulations and provide no relief to the USDA licensed biologic industry. Therefore, this alternative was not adopted.

2. Amend the regulations to update and standardize standard procedures and provide exemptions for testing ingredients of animal origin used in the preparation of killed virus vaccines. Licensees are currently using more effective methods of inactivation thus reducing significantly the survival of extraneous agents in killed virus vaccines. Experience has shown that cell lines used in the preparation of vaccines are stable and have not induced benign or malignant tumors in recipient animals. This alternative relieves the affected industry of some regulatory burden by relaxing requirements for testing ingredients used in the preparation of killed virus vaccines and by deleting the requirement to test cell lines for tumorigenicity and oncogenicity. Therefore, this alternative was adopted.

Background

Current procedures for testing cells and ingredients of animal origin used in the preparation of vaccines are repeated in several parts of the Standard Requirements. Such cells and ingredients are used almost exclusively in the production of virus vaccines. Many of these testing procedures have been used for many years and no longer reflect the state-of-the-art in laboratory testing. Since these methods were codified in the standard requirements, new procedures have evolved which are more sensitive and specific for detecting extraneous agents. Newer materials and techniques have been developed for identifying viruses used in the production of biological products. Experience in production of virus vaccines has clarified and increased our knowledge of test methods and types of cell to be used when testing cell lines for purity.

Development of more effective inactivating agents has made it possible to relax, and in some cases delete, certain test requirements for killed virus vaccines. This proposed relaxation of requirements does not relieve the manufacturer of the responsibility to produce a vaccine which is pure, safe, poent, and efficacious. It does decrease the number of tests required and allows for flexibility in testing.

The proposed standard procedures in new §§ 113.46 and 113.47 and revised § 113.34 are extracted from existing requirements found in §§ 113.50–113.55. Under this proposal, those sections would be amended to refer back to §§ 113.34, 113.46, and 113.47. This action would update and standardize test procedures and provide for a single reference in the Standard Requirements. It would also eliminate redundancy in the standards.

In cooperative efforts, Veterinary Services (VS) and licensed manufacturers have benefited over the years from extensive testing of cell lines for tumorigenic and oncogenic properties. Test methods currently used in testing for these properties have never resulted in an unsatisfactory cell line. Furthermore, millions of doses of vaccine have been produced on these cell lines without causing benign or malignant tumorous growth in the recipients. Therefore, it is proposed in these amendments to relax the current requirements for tumorigenicity and oncogenicity.

When standard requirements have been developed by VS through experience with a number of Outlines of Production and/or through the development of scientific knowledge at the National Veterinary Services Laboratories or elsewhere, such requirements are codified in the regulations. Codification assures uniformity of requirements for licensees and makes information on regulatory standards generally available to the public. These proposed amendments would increase the consistency of results when testing cell lines and ingredients used in preparation of virus vaccines by specifying uniform testing procedures. The type of cell used in testing a cell line for purity would be changed to the most sensitive cell type and would clarify the instructions for use. In addition, certain requirements for testing ingredients used in the preparation of killed virus vaccines would be relaxed when the licensee can demonstrate that the method of inactivation used is effective. These amendments make uniform requirements available to the general public and applicable to all licensees.

List of Subjects in 9 CFR Part 113

Animal biologics.

PART 113—STANDARD REQUIREMENTS

1. Part 113 would be amended by revising § 113.34 to read:

§ 113.34 Detection of hemagglutinating and/or hemadsorbing agents.

The test for detection of hemagglutinating and/or hemadsorbing agents provided in this section shall be conducted when prescribed in an applicable Standard Requirement or in the filed Outline of Production for a product.

(a) *Cell culture test.* When cell cultures are to be tested, samples of the cell monolayer and maintenance medium shall be used for the test.

(1) Maintenance medium which has been used to maintain the cell culture for at least 5 days shall be tested for hemagglutinating agents as follows:

(i) Aseptically remove maintenance medium from the cell culture into a sterile container.

(ii) Prepare twofold dilutions of the maintenance medium from 1:2 to at least 1:64 in phosphate buffered saline.

(iii) To 0.5 ml of each dilution of the maintenance medium, add 0.25 ml of a 0.5 percent red blood cell suspension. Suspensions of washed guinea pig, human type "O" and chicken red blood cells shall each be prepared and used in separate tests.

(iv) Mix the red blood cells with the dilutions of maintenance medium and

incubate at 22° to 25° C for 30 to 90 minutes.

(v) Examine tubes for agglutination of the red blood cells (hemagglutination).

(vi) A suspension of known hemagglutinating virus shall be used as a positive control in the test. Unused maintenance medium shall be used as a negative control.

(2) One or more monolayers that are each at least 6 cm^2 and at least 7 days from the last subculture shall be tested for hemadsorbing agents as follows:

(i) Wash the monolayer at least three times with fresh phosphate buffered saline at a pH of approximately 7.0.

(ii) Add an adequate volume of a 0.2 percent red blood cell suspension to uniformly cover the surface of the monolayer. Suspensions of washed guinea pig, human type "O" and chicken red blood cells shall be used. These suspensions may be mixed prior to adding to the monolayer or they may be used separately on separate monolayers.

(iii) Incubate the monolayer covered with the red blood cell suspension at 4° C for 30 minutes and examine for adherence of red blood cells to the monolayer (hemadsorption).

(iv) If no hemadsorption is apparent when the monolayer is examined in paragraph (a)(iii) of this section, wash the monolayer again at least three times with fresh phosphate buffered saline and add another aliquot of red blood cell suspension.

(v) Reincubate the monolayer with the new red blood cell suspension at 20° to 25° C for 30 minutes and examine again for hemadsorption.

(vi) A monolayer inoculated with a virus known to hemadsorb shall be used as a positive control in the test. An uninoculated monolayer prepared from cells previously tested as satisfactory shall be used as a negative control.

(b) *Completed product test.* When completed product is to be tested, final container samples of completed product shall be rehydrated as recommended on the label and used as the inoculum; *Provided,* That poultry vaccines shall be rehydrated with 30 ml of sterile purified water per 1,000 doses and used as the inoculum. When one or more fractions are to be used in combination with Newcastle Disease Vaccine, test samples shall be collected from bulk suspensions of each prior to mixing with the Newcastle Disease Vaccine.

(1) Each of ten, 9- to 10-day-old embryonating eggs from specific pathogen free flocks shall be inoculated into the allantoic cavity with 0.2 ml of the undiluted inoculum.

(2) Five uninoculated embryos of the same age and from the same flock as those used for the test shall serve as negative controls.

(3) Three to five days postinoculation, a sample of allantoic fluid from each egg shall be tested separately by a rapid plate test for hemagglutinating agents as follows:

(i) Mix approximately .05 ml of a 5.0 percent suspension of washed fresh chicken red blood cells with approximately 0.1 ml of the allantoic fluid on a glass test plate.

(ii) Incubate the mixture for 2 minutes at 23° to 35° C and examine for hemagglutination.

(iii) If the results are inconclusive, one or two blind passages in embryos shall be made using fluids from each of the original test eggs. Fluids from dead and live embryos may be pooled separately for the inoculum in these passages.

(iv) An allantoic fluid sample of Newcastle disease virus shall be used as a positive control in this test.

(c) If hemadsorption and/or hemagglutination attributable to an extraneous agent occurs, the material under test is unsatisfactory. If hemadsorption and/or hemagglutination occurs which is not attributable to an extraneous agent, the test shall be declared inconclusive and repeated or in lieu thereof, the material under test declared unsatisfactory.

2. Part 113 would be amended by adding §§ 113.46 and 113.47 to read:

§ 113.46 Detection of cytopathogenic agents.

The test for detection of cytopathogenic agents provided in this section shall be conducted when prescribed in an applicable Standard Requirement or in the filed Outline of Production for a product.

(a) One or more monolayers that are at least 6 cm^2 and at least 7 days from the last subculture shall be tested as provided in this paragraph.

(1) Stain each monolayer with a suitable cytological stain.

(2) Examine the entire area of each stained monolayer for evidence of inclusion bodies, abnormal number of giant cells, or other cytopathology indicative of cell abnormalities attributable to an extraneous agent.

(b) If specific cytopathology attributable to an extraneous agent is found, the material under test is unsatisfactory and shall not be used to prepare biological products. If an extraneous agent is suspected because of cytopathology and cannot be eliminated as a possibility by additional testing, the material under test is unsatisfactory.

§ 113.47 Detection of extraneous agents by the fluorescent antibody technique.

The test for detection of extraneous agents by the fluorescent antibody technique provided in this section shall be conducted when prescribed in an applicable Standard Requirement or in a filed Outline of Production for a product.

(a) Monolayers, at least 7 days after subculturing, shall be processed and stained with the appropriate antiviral fluorescein-conjugated antibody as specified in paragraph (b) of this section.

(1) At least 12 monolayers shall be required for each specific virus listed for each type of cells to be tested as prescribed in paragraph (b) of this section.

(i) At the time of the last subculturing, four test monolayers shall be inoculated with approximately 100 $FAID_{50}$ of the specific virus as positive controls.

(ii) Four additional test monolayers shall be the "material under test."

(iii) At least four monolayers of the same type of cell as the test monolayer shall be prepared separately with cells that have been tested as prescribed in §§ 113.51 or 113.52 (whichever is applicable) as negative controls.

(2) Each group of four monolayers shall have a total area of at least 6 cm^2.

(3) Positive control monolayers may be fixed before 7 days if fluorescence is enhanced by so doing. Monolayers that are so treated shall be stained at the same time as the material under test.

(b) The antiviral fluorescein-conjugated antibody to be used shall depend on the type of cells required for testing for extraneous agents as specified in an applicable Standard Requirement or in a filed Outline of Production. Specific antiviral fluorescein-conjugated antibody shall be applied to each type of cell specified for the test in accordance with the following list. Additional antiviral fluorescein-conjugated antibody may be specified for use by the Deputy Administrator. Specific antiviral fluorescein-conjugated antibody to be applied to cell type not listed shall be as specified by the Deputy Administrator. When a specific antiviral fluorescein-conjugated antibody is listed for application to more than one type of cells, it need only be applied to the most susceptible cell type used in propagation of the potential extraneous agents(s).

(1) Canine cells shall be tested for:

(i) Canine distemper virus;

(ii) Canine parvovirus using feline panleukopenia conjugate;

(iii) Reovirus; and

(iv) Rabies virus.

(2) Feline cells shall be tested for:

(i) Feline panleukopenia virus and mink enteritis virus using feline panleukopenia conjugate;
(ii) Rabies virus; and
(iii) Bovine virus diarrhea virus.
(3) Bovine cells shall be tested for:
(i) Bovine virus diarrhea virus;
(ii) Bovine parvovirus;
(iii) Bovine adenovirus I and V; and
(iv) Rabies virus.
(4) Porcine cells shall be tested for:
(i) Transmissible gastroenteritis virus;
(ii) Porcine adenovirus;
(iii) Porcine parvovirus;
(iv) Bovine virus diarrhea virus;
(v) Rabies virus; and
(vi) Hemagglutinating encephalomyelitis virus.
(5) Vero cells shall be tested for reovirus when not tested for in canine cells.
(c) After staining, each group of four monolayers shall be examined for the presence of specific fluorescence attributable to the presence of extraneous agents.
(1) If the material under test shows any evidence of specific viral fluorescence, it is unsatisfactory; *Provided,* That, if specific fluorescence attributable to virus being tested for is absent in more than one of the positive control monolayers, the test is inconclusive and may be repeated.
(2) If the fluorescence of the monolayers inoculated with the specific virus as positive controls is equivocal, or if the negative monolayers show equivocal fluorescence indicating possible viral contamination, or both, the test shall be declared inconclusive, and may be repeated; *Provided,* That, if the test is not repeated, the material under test shall be regarded as unsatisfactory.

3. Part 113 would be amended by revising §§ 113.51, 113.52, 113.53, and 113.55 to read:

§ 113.51 Requirements for primary cells used for production of biologics.

Primary cells used to prepare biological products shall be derived from normal tissue of healthy animals. When prescribed in an applicable Standard Requirement or in the filed Outline of Production, each batch of primary cells used to prepare a biological product shall be tested as prescribed in this section. A batch of primary cells found unsatisfactory by any prescribed test shall not be used. A serial of biological product shall not be released if produced from primary cells that are found unsatisfactory by any prescribed test.

(a) Final container samples of completed product or samples of the final pool of harvested material or samples of each subculture of cells used to prepare the biological product shall be shown free of mycoplasma as proscribed in § 113.28. The sample for testing shall consist of at least 75 cm^2 of actively-growing cells or the equivalent in harvest fluids; *Provided,* That all sources of cells in the batch of primary cells are represented.

(b) Final container samples of completed product or samples of the final pool of harvested material or samples of each subculture of cells used to prepare the biological product shall be shown free of bacteria and fungi as prescribed in § 113.26.

(c) A monolayer at least 75 cm^2 from each batch of primary cells or each subculture of primary cells used to prepare a biological product shall be shown free of extraneous agents as prescribed in this paragraph.

(1) The test monolayer shall be maintained using the mediums (with additives) and under conditions similar to those used to prepare biological products.

(i) Monolayers of avian origin shall be maintained for at least 14 days.

(ii) Monolayers not of avian origin shall be maintained for at least 28 days.

(2) Cells shall be subcultured at least twice during the maintenance period. Each subculture shall result in a new monolayer of at least 75 cm^2.

(3) Monolayers shall be examined regularly throughout the required maintenance period for evidence of the presence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the batch of primary cells is unsatisfactory.

(4) At the conclusion of the required maintenance period, monolayers shall be tested for:

(i) Cytopathogenic agents as prescribed in § 113.46;

(ii) Hemagglutinating and/or hemadsorbing agents as prescribed in § 113.34; and

(iii) Extraneous agents by the fluorescent antibody technique as prescribed in §113.47.

§ 113.52 Requirements for cell lines used for production of biologics.

When prescribed in an applicable Standard Requirement or in a filed Outline of Production each cell line used to prepare a biological product shall be tested as prescribed in this section. A cell line found unsatisfactory by any prescribed test shall not be used. A serial of biological product shall not be released if produced from a cell line that is found unsatisfactory by any prescribed test.

(a) *General requirements.* (1) A complete record of the cell line shall be kept, such as, but not limited to, the source, passage history, and medium used for propagation.

(2) A master Cell Stock (MCS) shall be established at a specified passage level for each cell line. The passage level and identity of the MCS and the highest passage level (MCS+n) intended for use in the preparation of a biological product shall be specified in the Outline of Production for the product.

(3) Sufficient 1.0 ml or larger aliquots of MCS and MCS+n shall be prepared, kept in a frozen state, and made available to Veterinary Services (VS) upon request for performing the tests prescribed in this section.

(4) Each lot of cells shall be monitored for the characteristics determined to be normal for the cell line, such as, but not limited to, microscopic appearance, growth rate, acid production, or other observable features.

(b) The MCS and MCS+n shall be shown to be of the same species of origin as that reported in paragraph (a)(1) of this section by the following method:

(1) At least four monolayers at least 6 cm^2 shall be grown to at least 80 percent confluency using medium that does not contain additives whose species of origin match the species of origin of the MCS.

(2) The monolayers shall be removed from their media, processed, stained, and examined.

(i) At least two monolayers shall be stained with an antispecies fluorescein-conjugated antibody unrelated to the species of origin of the MCS.

(ii) At least two monolayers shall be stained with an antispecies fluorescein-conjugated antibody specific to the species of origin of the MCS.

(iii) All monolayers shall be examined for evidence of specific fluorescence.

(3) If specific fluorescence is not found in the monolayers stained with the conjugate specific to the species of origin of the MCS, the cell line is unsatisfactory and shall not be used for vaccine production.

(4) If nonspecific fluorescence is found in the monolayers stained with conjugate from an unrelated species of origin or other results make the test results equivocal, the procedure shall be repeated until either specific fluorescence is found only in the monolayers stained with conjugate specific to the species of origin of the MCS and not in the control monolayers or specific fluorescence cannot be identified and the MCS is declared unsatisfactory.

(5) Alternate tests to determine the species of origin of the MCS may be used if approved by VS.

(c) The MCS, MCS+n, and either each subculture of cells used to prepare a biological product or the final pool of harvested material (with or without the stabilizer) or final container samples of completed product for each serial of such product shall be shown to be free of mycoplasma as prescribed in § 113.28. The sampe for testing shall consist of at least 75 cm^2 of actively growing cells or the equivalent, in harvest fluids. The cells shall represent all sources of cells in the batch.

(d) The MCS, MCS+n, and each subculture used to prepared a biological product or the final pool of harvested material for each serial of such product shall be tested for bacteria and fungi as prescribed in § 113.26. If bacteria or fungi are found in the MCS, the MCS shall not be used. If bacteria or fungi are found in a subculture, the subculture shall not be used.

(e) Each MCS derived from or intended for use in bovine species shall be shown to be free of *Brucella abortus* by using 1.0 ml aliquots of the MCS as inoculum and using the method prescribed in § 113.32.

(f) A monolayer at least 75 cm^2 from each MCS and MCS+n shall be shown free of extraneous agents as prescribed in this paragraph.

(1) The test monolayer shall be maintained for at least 28 days using the medium (with additives) intended for growth and maintenance and under conditions similar to those used to prepare biological products.

(2) Cells shall be subcultured at least two times during the maintenance period. Each subculture shall result in at least one new monolayer of at least 75 cm^2.

(3) Monolayers shall be examined regularly throughout the 28-day maintenance period for evidence of the presence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the MCS is unsatisfactory.

(4) At the conclusion of the 28-day maintenance period, monolayers shall be tested for:

(i) Hemagglutinating and/or hemadsorbing agents as prescribed in § 113.34;

(ii) Cytopathogenic agents as prescribed in § 113.46; and

(iii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(g) At the conclusion of the 28-day maintenance period provided in paragraph (f) of this section, at least one monolayer of each cell line, at least 75 cm^2, shall also be shown free of extraneous agents as prescribed in this paragraph.

(1) Alternately freeze and thaw the monolayer(s) three times. Centrifuge the disrupted cells at no greater than 2,000 x g for no more than 15 minutes to remove cellular debris. Divide the supernatant into equal aliquots and dispense 1.0 ml onto each of at least one monolayer (at least 75 cm^2) of:

(i) Vero (African green monkey) cell line;

(ii) Embryonic cells, neonatal cells, or a cell line of the same species of origin as the MCS if different than provided in paragraph (g)(1)(i) of this section;

(iii) Embryonic cells, neonatal cells, or a cell line of the species for which the vaccine is recommended if different than provided in paragraphs (g)(1) (i) and (ii) of this section; and

(iv) Embryonic cells, neonatal cells, or a cell line of bovine origin if not specified in paragraphs (g)(1)(i), (ii), and (iii) of this section.

(2) The monolayers of cells specified in paragraphs (g)(1) (i), (ii), (iii), and (iv) of this section shall be maintained for at least 14 days after receipt of the aliquot of disrupted MCS or MCS+n. Monolayers shall be subcultured at least once during the maintenance period. Each subculture shall result in a new monolayer of at least 75 cm^2.

(3) Monolayers shall be examined regularly throughout the 14-day maintenance period for evidence of the presence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the MCS is unsatisfactory.

(4) At the conclusion of the 14-day maintenance period, monolayers shall be tested for:

(i) Hemagglutinating and/or hemadsorbing agents as prescribed in § 113.34;

(ii) Cytopathogenic agents as prescribed in § 113.46; and

(iii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(h) The karyology of cell lines used in the production of biologics shall be examined as follows. A minimum of 50 mitotic cells shall be examined at both the MCS and MCS+n. The modal number in the MCS+n shall not exceed plus or minus 15 percent of the modal number of the MCS. Any marker chromosomes present in the MCS shall persist at the MCS+n. If the modal number exceeds the limits and/or the marker chromosomes do not persist (through the MCS+n passage level), the cell line shall not be used for vaccine production.

(i) If direct or indirect evidence exists that a cell line which is intended for use in the preparation of a virus vaccine may induce maligancies in the species for which the product is intended, that cell line shall be tested for tumorogencity/oncogenicity by a method acceptable to VS.

§ 113.53 Requirements for ingredients of animal origin used for production of biologics.

Each lot of ingredient of animal origin which is not subjected to heat sterilization or other sterilization methods acceptable to Veterinary Services (VS), such as, but not limited to serum and albumin, used to prepare a biological product shall be tested as prescribed in this section by the licensee or a laboratory acceptable to VS. Results of all tests shall be recorded by the testing laboratory and made a part of the licensee's records. A lot of ingredient found unsatisfactory by any prescribed test shall not be used to prepare a biological product. A serial of biological product shall not be released if produced using an ingredient that is found unsatisfactory by any prescribed test.

(a) Samples of each lot of ingredient of animal origin which is not subjected to heat sterilization, used to prepare a biological prduct shall be shown free of mycoplasma by the method prescribed in § 113.28.

(b) Samples of each lot of ingredient of animal origin which is not subjected to heat sterilization or other sterilization methods acceptable to VS used to prepare a biological product shall be shown free of bacteria and fungi as prescribed in § 113.26.

(c) Samples of each lot of ingredient of animal origin, except porcine trypsin, which is not subjected to heat sterilization or other viricidal procedure acceptable to VS used in the preparation of biological products shall be tested as prescribed in this paragraph; *Provided*, That, if the licensee demonstrates that the method of inactivation has been shown to kill potential extraneous agents, ingredients used in the preparation of killed biological products are exempt from this requirement.

(1) Monolayers at least 75 cm^2 of Vero (African green monkey) cell line and of primary cells or a cell line of the same species of origin as the ingredient shall be used in the test. Cell lines used shall have been found satisfactory when tested as prescribed in § 113.52 and primary cells used shall have been found satisfactory when tested as prescribed in § 113.51.

(2) At least 3.75 ml of the ingredient shall be used in the growth medium for the preparation of at least 75 cm^2 test monolayers. The ingredient shall also be used in the growth medium when monolayers are subcultured. If the

ingredient being tested is cytotoxic when tested in this manner, other procedures may be used if approved by VS.

(3) The test monolayers shall be maintained for at least 28 days.

(4) Cells shall be subcultured at least two times during the maintenance period. Each subculture shall result in at least one new monolayer of at least 75 cm^2.

(5) Monolayers shall be examined regularly throughout the 28-day maintenance period for evidence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the ingredient is unsatisfactory.

(6) At the conclusion of the 28-day maintenance period, monolayers shall be tested for:

(i) Hemagglutinating and/or hemadsorbing agents as prescribed in § 113.34;

(ii) Cytopathogenic agents as prescribed in § 113.46; and

(iii) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(d) Each lot of porcine trypsin which has not been treated to inactivate porcine parvovirus (PPV) in a manner acceptable to VS shall be tested for PPV as prescribed in this paragraph.

(1) Not less than 5.0 grams of trypsin shall be dissolved in a volume of phosphate buffered saline sufficient to fill a centrifuge angle head. After centrifuging for 1 hour at 80,000 x g, the pellet material shall be reconstituted in distilled water and inoculated into a flask containing 75 cm^2 of a 30 to 50 percent confluent monolayer culture of primary porcine cells or a porcine cell line of proven equal PPV susceptibility. An additional flask of cells shall be held as a negative control.

(2) The test and control monolayers shall be maintained for at least 14 days and subcultured at least once during the maintenance period.

(3) At the end of the 14-day maintenance period, and 4 to 7 days after the last subculturing, monolayers shall be tested for the presence of porcine parvovirus by the fluorescent antibody technique as prescribed in § 113.47.

(e) A sample of serum from each donor horse used to produce a lot of equine serum used in the preparation of biological products recommended for use in horses shall be tested using the Coggins test for equine infectious anemia antibodies. If antibodies to equine infectious anemia are found, the lot of serum is unsatisfactory.

§ 113.55 Detection of extraneous agents in Master Seed Virus.

Each Master Seed Virus (MSV) shall be tested as prescribed in this section. A MSV found unsatisfactory by any prescribed test shall not be used. A serial of biological product shall not be released if produced from a MSV that is found unsatisfactory by any prescribed test.

(a) At least a 1.0 ml aliquot per cell culture of MSV shall be dispensed onto monolayers (at least 75 cm^2 in area) of:

(1) Vero (African green monkey) cell line;

(2) Embryonic cells, neonatal cells, or a cell line of the species for which the vaccine is recommended; and

(3) Embryonic cells, neonatal cells, or a cell line of the species of cells in which the MSV is presently being propagated if different than prescribed in paragraphs (a)(1) and (a)(2) of this section. Cell lines used shall have been found satisfactory when tested as prescribed in § 113.2 and primary cells used shall have been found satisfactory when tested as prescribed in § 113.51. If the MSV is cytopathic for or causes hemadsorption in the cells in which it is to be tested, the MSV shall be neutralized with specific antibody-free blocking sera supplied or approved by Veterinary Services (VS) or counteracted by a method approved by VS.

(b) At least one monolayer of each cell type used in the test shall be maintained as an uninoculated control.

(c) Each monolayer shall be maintained for at least 14 days.

(d) Cells shall be subcultured at least once during the maintenance period. Each subculture shall result in at least one new monolayer at least 75cm^2.

(e) Monolayers shall be examined regularly throughout the 14-day maintenance period for evidence of cytopathogenic agents. If evidence of a cytopathogenic agent is found, the MSV is unsatisfactory.

(f) At the conclusion of the 14-day maintenance period, monolayers shall be tested for:

(1) Cytopathogenic agents as prescribed in § 113.46;

(2) Hemagglutinating and/or hemadsorbing agents as prescribed in § 113.34; and

(3) Extraneous agents by the fluorescent antibody technique as prescribed in § 113.47.

(37 Stat. 832–833; 21 U.S.C. 151–158)

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C., this 23rd day of November 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-32636 Filed 11-29-82; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM-40-24]

Union Carbide Corp.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment a notice of receipt of a petition for rulemaking submitted by the Union Carbide Corporation. The petitioner requests that the NRC amend portions of its regulations setting out criteria for the operation of uranium mills and the disposition of tailings or waste resulting from uranium milling activities. The petitioner supports the suggested amendments with information it says was not available to the NRC at the time the regulations were issued. The petitioner believes that its suggested changes would continue to protect adequately public health, safety, and the environment while significantly reducing the compliance costs incurred by the petitioner in the operation of its uranium milling facilities.

DATE: Submit comments by January 31, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

For a copy of the petition write: The Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Inspect and copy comments received on the petition at: The NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7086.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has received a petition for rulemaking from the Union Carbide Corporation. This petition has been assigned Docket No. PRM–40–24.

The Petitioner

The petitioner, Union Carbide Corporation, is a New York-based corporation engaged in uranium exploration, milling, and mining. The petitioner operates a uranium and vanadium milling facility at Uravan, Colorado and uranium milling facilities in Maybell, Colo., and Gas Hills, Wyo.

Colorado is an Agreement State under section 274 of the Atomic Energy Act. An amendment to the agreement between the NRC and the State of Colorado on May 10, 1982, gave the Colorado Department of Health the authority to license the possession of source and byproduct material attendant to uranium milling activities. The State of Colorado adopted standards that meet the minimum standards set out in Appendix A to Part 40 of NRC's regulations. Thus, the petitioner says, its Colorado facilities must comply, at a minimum, with the requirements set out in NRC's regulations even though the State of Colorado is the licensing authority.

Wyoming is not an Agreement State. Therefore, NRC remains the licensing and regulatory authority for source and byproduct material in Wyoming. As a result, NRC directly imposes the requirements of Appendix A to Part 40 on the petitioner's Wyoming facility.

The Suggested Amendments: Background

The petitioner requests specific amendments to Criteria 1, 5, 6, and 10 of Appendix A to Part 40. This appendix sets out the technical, financial, ownership, and long-term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of uranium mills and the tailings or waste systems and sites at which uranium mills and systems are located. Appendix A was issued as part of the NRC's regulations implementing the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604, 42 U.S.C. 7901, et seq.). These regulations were published in the Federal Register on October 3, 1980 (45 FR 65531).

The petitioner presents the suggested amendments to Criteria 1, 5, 6, and 10 of Appendix A to Part 40 on the basis of information which it says was not available to the NRC at the time the original regulations were issued. This supporting material, which is technical in nature, and comprises almost 400 pages, has been included by the petitioner in the petition for rulemaking.

The petitioner believes that the suggested amendments will continue to protect adequately the public health, safety, and the environment from radiation hazards associated with uranium milling. In addition, the petitioner asserts that its suggested amendments are more cost effective, in that they would significantly reduce the costs of compliance at the facilities covered by the regulations.

The Suggested Amendments: Criterion 1

Criterion 1 covers the selection of new tailings disposal sites or the adequacy of existing tailings disposal sites. The petitioner suggests that the long-term isolation of tailings and associated contaminants be defined as a 100–200 year period rather than the current "thousands of years" period. To accomplish this change, the petitioner would revise the introductory text of Criterion 1 to read as follows:

> In selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites, the following site features, which will determine the extent to which a program meets the broad objective of isolating the tailings and associated contaminants from man and the environment during operations and for 100–200 years thereafter without ongoing active maintenance, shall be evaluated. . .

The petitioner bases this suggestion on testimony before the NRC, the states of Colorado and New Mexico, the Environmental Protection Agency, and the Military Nuclear Systems Subcommittee of the Committee on the Armed Services. The petitioner contends that this testimony indicates that:

1. The thousands of years period is unreasonable.

2. Technology does not exist to assure the isolation of tailings for thousands of years.

3. The present requirement is costly and speculative.

4. It is difficult, if not impossible, to design a reclamation plan for a tailings pile that will withstand erosion over a period of thousands of years.

5. Tailings disposal should be based on a realistic period of time, such as 100–200 years.

6. The thousands of years requirements tends to relieve the government of any responsibility for ultimate control (Criterion 11).

7. The funds for long-term surveillance and control will be available to pay for any repair necessitated by damages resulting from any unexpected event (Criterion 10).

The Suggested Amendments: Criterion 5

Criterion 5 covers the seepage of toxic materials into the groundwater. The peititioner requests that this criterion be amended by removing the following sentences:

> Where groundwater impacts are occurring at an existing site due to deepage, action shall be taken to alleviate conditions that lead to excessive seepage impacts and restore groundwater quality to its potential use before milling operations began to the maximum extent practicable. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis.

In their place the petitioner would substitute the following language:

> Where excessive groundwater contamination that may cause present and future harm due to human health and the environment is occurring at an existing site due to seepage of radioisotopes and other toxic materials into groundwater, corrective action shall be taken to clean up groundwater and alleviate conditions that may lead to such contamination to the maximum extent practicable. The specific seepage control and groundwater protection method or combination of methods to be used shall be worked out on a site-specific basis. In evaluating the method(s) to be used, consideration should be given to the current use of the groundwater, naturally-occurring characteristics of the groundwater, potential use of the groundwater based on needs of the community, size of the aquifer, and availability of other drinking water sources, and the practicability of restoration. In determining potential use of groundwater, any applicable state aquifer designation, water quality standard or water quality criteria shall be considered.

The petitioner contends that Criterion 5, as written, distinguishes new from existing sites. For new sites, the petitioner states that seepage may not result in deterioration of groundwater supplies, and technical alternatives are provided to assure that deterioration does not occur. The petitioner states that Criterion 5 currently requires that for existing sites, if groundwater quality is affected, groundwater quality must be restored. The petitioner asserts that no guidance is given concerning the standards to be used in developing the required site-specific seepage control and groundwater protection methods.

The petitioner's proposed language is intended to provide guidance it believes is missing for existing sites.

The Suggested Amendments: Criterion 6

Criterion 6 concerns the earth cover to be placed over tailings or wastes to prevent the surface exhalation of radon. This criterion currently requires a three-meter cover over tailings or wastes to result in a calculated reduction in surface exhalation of radon emanating from the tailings or wastes to less than two picocuries per square meter per second. Criterion 6 currently reads as follows:

Criterion 6—Sufficient earth cover, but not less than three meters, shall be placed over tailings or wastes at the end of milling operations to result in a calculated reduction in the surface exhalation of radon emanating from the tailings or wastes to less than two picocuries per square meter per second. In computing required tailings cover thicknesses, moisture in soils in excess of amounts normally found in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. If non-soiled materials are proposed to reduce tailings covers to less than three meters, it must be demonstrated that such materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term time intervals. Near surface cover materials (i.e., within the top three meters) shall not include mine waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

The petitioner requests that Criterion 6 be revised so that remedial actions are cost-effective and based on a realistic assessment of the health hazard to the public that uranium mill tailings may pose. The petitioner believes that its proposal will ensure that mill tailings are controlled in a safe manner and that people and the environment will be protected from radiation hazards associated with tailings disposal. The petitioner's suggested revision of Criterion 6 reads as follows:

This criterion addresses tailings cover requirements and radiation control. Earth cover shall be placed over tailings or waste at the end of milling operations to prevent erosion over 100–200 years. A site-specific geo-technical evaluation shall be made to determine cover design requirements. The evaluation shall take into consideration climatic conditions and surface hydrology. The cover shall be designed to result in a calculated reduction in radon emanation from the covered tailings or waste areas to assure that concentrations of radon and other radioactive material concentrations beyond a small buffer zone of approximately 500 feet established around covered areas do not exceed limits specified in Appendix B, Table II of 10 CFR Part 20, excluding background. Habitable structures within the buffer zone shall be prohibited. If non-soil materials are propsed to be used for cover material, it must be demonstrated that such materials will not crack or degrade by differential settlement, weathering or other mechanism over 100–200 years.

The petitioner says the suggested revision to Criterion 6 contains the following specific changes:

1. The radon flux standard is deleted. The petitioner claims that radon flux from tailing piles has no direct health-related significance, and that the primary health concern is radon daughter concentrations in inhabited buildings near tailings sites. The petitioner contends that a cover designed according to the requirements in its proposal will reduce the radon emanation rate and, as a result, the potential for radon daughter build-up. The petitioner also claims that the added buffer zone would provide additional protection.

2. Beyond the buffer zone, the concentration limits for radon and other radioactive materials would be as specified in Table II of Appendix B to 10 CFR Part 20. The petitioner contends that these limits should be the standards that a site-specific cover design must meet as they have been recognized by the NRC as the standards which protect against potential radiation hazards resulting from licensed activities.

3. The requirement that direct gamma exposure from tailings or wastes be reduced to background levels is deleted. The petitioner asserts that external gamma radiation originates almost entirely from the outer one foot of tailings and will be easily shielded by an earth cover designed in accordance with its proposal.

4. The prohibition on the use of mine waste or rock that contains elevated levels of radium in the earth cover is also excluded. The petitioner claims that, if the suggested changes are accepted, the material to be used as cover will be among the many considerations evaluated in determining cover design requirements.

In support of the suggested amendments, the petitioner contends that the current Criterion 6 is based on perceived risks to the public from exposure to mill tailings. The petitioner points to the DOE Commingled Tailings Study, testimony before Congress, and comments to the EPA indicating that health risks to the public from exposure to radium and radon from uranium mill tailings should be compared with risks from exposure to other natural sorces of radium, radon, and their daughters as well as to other risks commonly accepted by the public. The petitioner contends that, if such comparisons are made, it is clear that the health risks to the public associated with uranium mill tailings have been greatly overestimated.

The Suggested Amendments: Criterion 10

This criterion imposes a charge on each mill operator to cover the cost of long-term surveillance. The total charge must be such that, "with an assumed 1 percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance." The petitioner proposes the use of a 2 percent interest rate rather than the current 1 percent interest rate. The petitioner requests that this rate, which it considers to be a more accurate percentage spread between inflation and interest rates, be used.

The Suggested Amendment: Additional Supporting Information

The petitioner cites information it says was not available to the NRC at the time the regulations were issued to support its suggested changes. This information includes public comment solicited as part of the rulemaking procedures used by the states of Colorado and New Mexico so that they could adopt regulations compatible with NRC's requirements. Additionally, it says more recent comments on mill tailings regulations have been presented to the EPA in response to its proposed standard for inactive uranium processing sites. A House Subcommittee focused on testimony on NRC's mill tailings regulations in 1981 and most recently in August 1982 after completion by DOE of its report on the clean-up and cost of commingled tailings sites.

The petitioner believes that the Final Generic Environmental Impact Statement on Uranium Milling (Final GEIS), NUREG–0706, is flawed. The petitioner claims that estimates on the number of uranium mills and the amount of mill tailings generated through the year 2000 are inaccurate. DOE projections on the increased nuclear generating capacity by the year 2000 have been revised downward from the mid-range of 180 gigawatts used in the Final GEIS to a low range of 145 and a high range of 185 estimated in March 1982. The petitioner believes that the low range projection by DOE is more

accurate than the mid-range used by NRC in its Final GEIS. As a result, the petitioner claims that the estimated amount of uranium needed that was presented in the Final GEIS is almost 1.8 times greater than present assessments indicate. Thus, the petitioner reasons that the amount of mill tailings and the health effects attributable to those mill tailings are also overestimated.

The petitioner claims that the Final GEIS fails to use the best available information on dose-response models, risk estimates, and carcinogenic co-factors to calculate the benefits of radon emission controls, and ignores the observed distribution of radon. The petitioner also states that the cost estimates used in the Final GEIS are inaccurate.

Finally, the petitioner claims that the language of the criteria in Appendix A to Part 40 does not provide the site-specific flexibility promised in the introductory paragraph of the Appendix.

Invitation to Comment

The Commission would like to receive public comment on the specific items addressed in PRM–40–24. Because of the complexity of the issues raised and the large amount of supporting material (approximately 400 pages) submitted by the petitioner, the Commission urges prospective commenters to obtain a complete copy of the petition. While copies of the petition last, they may be obtained without charge by writing the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Thereafter, they may be inspected or copied at a cost of five cents per page at the NRC Public Document Room at the location listed above.

Dated at Washington, D.C., this 23rd day of November 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82–32576 Filed 11–29–82; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Part 61

Licensing Requirements for Land Disposal of Radioactive Waste; Availability of Final Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Commission announces the availability of a Final Environmental Impact Statement (FEIS) being issued under the National Environmental Policy Act of 1969 and the Commission's regulation 10 CFR Part 51 to support the Commission's final regulation 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste." The FEIS has been prepared based upon public comments received on a Draft Environmental Impact Statement (DEIS) published in September 1981 to support the proposed Part 61 regulation.

DATE: The Commission expects to published the final Part 61 regulation in the **Federal Register** approximately 30 days following the date of the Environmental Protection Agency's **Federal Register** notice of availability of the FEIS.

ADDRESSES: Copies of the FEIS (NUREG–0945) are available for purchase from the GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–9530. Copies are also available from the National Technical Information Service (NTIS), Springfield, VA 22161. The FEIS is available for public inspection at the Commission's Public Document Room located at 1717 H Street NW, Washington D.C. Copies of public comments received by the Commission on the proposed Part 61 regulation and DEIS are contained in the FEIS. They are also available for inspection at the Public Document Room.

FOR FURTHER INFORMATION CONTACT:

Paul H. Lohaus, Low-Level Waste Licensing Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 427–4500.

SUPPLEMENTARY INFORMATION:

Availability of Final Environmental Impact Statement on 10 CFR Part 61; Licensing Requirements for Land Disposal of Radioactive Waste

Pursuant to the National Environmentl Policy Act of 1969 and the United States Nuclear Regulatory Commission's Regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Impact Statement (FEIS) on 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," has been prepared by the Commission's Office of Nuclear Material Safety and Safeguards and is available for inspection by the public in the Commission's Public Document Room located at 1717 H Street NW, Washington D.C. The FEIS has been prepared based upon consideration of public comments received upon the Draft Environmental Impact Statement (DEIS) on the Part 61 rule, the availability of which was noticed in the **Federal Register** on October 22, 1981 (46 FR 51776). A ninety-day comment period was offered in the October 22 **Federal Register** notice.

NRC regulations in 19 CFR Part 51 state that a permit, license, order or effective regulation for which an environmental impact statement is required should not be issued until 30 days following provision of the final environmental impact statement to the Environmental Protection Agency (EPA) and commenting agencies, and made available to the public. Accordingly, copies of the Part 61 FEIS have been provided to the EPA provided to all other persons, organizations, or agencies who commented on the DEIS, and placed in the Commission's Public Document Room. The EPA will notice receipt of the FEIS in the **Federal Register.** NRC expects to publish the final Part 61 regulation in the **Federal Register** 30 days following the EPA notice.

Other Federal and State agencies are also being provided with copies of the FEIS. The FEIS is also being made available at the State Clearinghouses. Copies of the FEIS (identified as NUREG–0945) are available for purchase from the GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492–9530. Copies are also available from the National Technical Information Service (NTIS), Springfield, VA 22161. The three volume document is priced at $31.50. Individual volumes may also be purchased at the following prices: Volume 1—$7.50, Volume 2—$13.00, and Volume 3—$11.00.

The DEIS was published as a four-volume set identified as NUREG–0782, and contained an exhaustive and detailed analysis of a wide range of alternatives. Based upon public comment NRC staff chose not to republish this exhaustive analysis, but rather to use the DEIS as a resource and reference document to the FEIS. In the FEIS, identified as NUREG–0945, the alternatives analyzed have been grouped into four major cases which present the basis for decisions made regarding the Part 61 requirements. Changes made to the DEIS and assumptions used in the analysis are noted in the FEIS. Other changes to the draft which are not critical to the analyses are presented in an FEIS appendix as DEIS errata.

The FEIS is divided into three volumes. Volume 1 contains the summary and six chapters. Chapter 1 is an introduction which describes the proposed action and presents the purpose, scope, need and structure of the FEIS. Chapter 2 presents background information about low-level wastes, describes the affected environment, and reviews the historical basis for the Part 61 rule. Chapter 3 summarizes the major comments received, changes made, and actions taken by the NRC staff in response to the comments. Chapter 4 describes the pathways of exposure analyzed, impact measures used, specific alternatives analyzed, and presents the results. Chapter 5 presents final conclusions and requirements derived from the analysis of alternatives. Chapter 6 presents the typical and unmitigated impacts of the Part 61 rule based on analysis of disposal of waste on a regional basis following the final requirements in Part 61.

Volumes 2 and 3 of the FEIS contain a series of supporting appendices: Appendices A and B are published as Volume 2 while Appendices C through F are published as Volume 3. The following is a list of appendices.

Appendix A—Staff Analysis of Public Comments on the Draft EIS for 10 CFR Part 61 (Includes copies of Public Comments)

Appendix B—Staff Analysis of Public Comments on Proposed 10 CFR Part 61 Rulemaking (Includes copies of Public Comments)

Appendix C—Revisions to Impact Analysis Methodology

Appendix D—Computer Codes Used for Final EIS Calculations

Appendix E—Errata for the Draft EIS for 10 CFR Part 61

Appendix F—Proposed Final Rule and Supplementary Information.

Dated at Silver Spring, Md., this 19th day of November, 1982.

For the Nuclear Regulatory Commission.

Ross Scarano,

Chief, Low-Level Waste Licensing Branch, Division of Waste Management.

[FR Doc. 82-32708 Filed 11-29-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

Securities of Insured Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The proposal would amend the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under the Securities Exchange Act of 1934 (15 U.S.C. 78) ("Act") in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. This proposal is intended to comply with section 12(i) to update the regulation, and to make corrections where necessary. It covers the following: (1) Interim financial reporting; (2) timely filing of statements; (3) reporting effects of changing prices; (4) accounting amendments; (5) exhibit requirements; (6) financial statements; and (7) technical amendments.

DATES: Comments must be received on or before December 30, 1982.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulations to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Gervino, Senior Attorney, (202-389-4171) or Mulford H. Smith, Senior Financial Analyst, (202-389-4651), Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC would make the following changes:

A. Proposed Amendments to Part 335

1. *Interim Financial Reporting.* On February 9, 1981, the SEC amended its regulations to provide for new interim financial information provisions and to revise its quarterly reporting form. The SEC stated that this action is intended to simplify disclosure regulations, to reduce reporting burdens, to encourage integration of formal and informal shareholder communications, and to enhance the value of quarterly interim information to investors and shareholders (SEC Rel. No. 34-17524, 46 FR 12480 (February 17, 1981)). The FDIC would amend its regulations to make them substantially similar to the SEC amendments. Accordingly, § 335.309(a) (Form F-1), § 335.321(f) (Form F-3), and § 335.331 (Form F-4) would be amended.

2. *Timely Filing of Statements.* On April 2, 1980, the SEC amended its regulations to eliminate its present extension application procedure for late filings of annual and quarterly reports it requires. In lieu of its old procedure, the new rules institute a system requiring notification of a registrant's inability to file timely all or any portion of a required report. In addition, the amended rules provide a procedure whereby a late annual report or portion thereof filed on or before the fifteenth day after the prescribed due date or late quarterly report or portion thereof filed on or before the fifth day after the prescribed due date will be deemed to have been filed timely (SEC Rel. No. 34-16718, 46 FR 23651 (April 8, 1980)).

In adopting the rule, the SEC stated that it will provide diclosure with respect to non-timely filing and will alleviate the burdens attendant the application procedure while at the same time allow for appropriate relief. The FDIC would amend its regulations to provide a substantially similar procedure to that of the SEC. Accordingly, § 335.358 would be revised.

3. *Report Effects of Changing Prices.* On February 17, 1981, the SEC adopted amendments to its rules to require certain issuers to include supplementary information in certain SEC filings on the effects of changing prices, as specified by Statement of Financial Accounting Standards ("SFAS") Nos. 33, 39, 40, and 41, "Financial Reporting and Changing Prices" of the Financial Accounting Standards Board. It also expanded its safe harbour rule, which had been applicable only to projections, to cover that information. The SEC in turn amended the above amendments technically on March 27, 1981 (SEC Rel. No. 34-17547, 46 FR 13988 (February 25, 1981); SEC Rel. No. 34-17658, 46 FR 19456 (March 31, 1981)). This amendment would be applicable only to large banks. The FDIC would amend its regulations to make them substantially similar to SEC amendments. Accordingly, §§ 335.103, 335.203 and 335.312 (Form F-2) would be amended.

4. *Annual Report Form.* On September 2, 1980, the SEC amended its regulations to change the form of its annual report form, its Form 10-K and other related forms and rules. The amendments were designed primarily to improve disclosure, reduce disclosure burdens, and to facilitate the integration of the SEC's disclosure systems under the Securities Act of 1933 and the Securities Exchange Act of 1934 (SEC Rel. No. 34-17114, 45 FR 63630 (September 25, 1980)). The SEC intended the changes to make it easier to incorporate from the annual report to security holders to the Form 10-K if an issuer so chose. The Form 10-K was restructured to segregate the

information contained in that form from proxy related supplemental information. The new form is structured in four parts. The first part retains the detailed disclosure requirements relating to business, properties, legal proceedings and beneficail ownership. The second part consists of the basic disclosure information which is common to both the Securities Act and the Exchange Act filings. The third part consists of additional proxy disclosure information relating to directors and executive officers on management remuneration. Finally, the fourth part contains requirements for financial statement schedules.

Although the FDIC has no jurisdiction under the Securities Act of 1933, the revision is otherwise designed to simplify filing and seems appropriate for banks. The FDIC would adopt substantially similar amendments to those of the SEC. Accordingly, § 335.312 (Form F–2) and § 335.203 would be amended.

5. *Exhibits.* On August 27, 1980, the SEC adopted amendments to its regulations designed to standardize and improve the SEC's requirements relating to filing of exhibits. On February 6, 1981, a technical amendment was made to this amendment (SEC. Rel. No. 34–17095, 45 FR 58822 (September 5, 1980); SEC Rel. No. 34–17522, 46 FR 11952 (February 12, 1981)). The changes were made by the SEC for the purposes of making the requirements more relevant to investors and reducing the burdens which they impose on registrants. The SEC said that the change would lessen the volume of paper filed with it.

The FDIC concurs with those objectives, and would amend its regulations in substantially the same fashion as the SEC. Accordingly, § 335.309a (Form F–1), § 335.321 (Form F–3) and § 335.331 Form F–4) would be amended.

6. *Financial Statements.* On September 2, 1980, the SEC published two releases amending its accounting rules and its instructions as to financial statements. A major amendment eliminated the requirement of a summary of operations. Instead, financial statements are required to cover results of operations for three years rather than the two years now required (SEC Rel. No. 34–17–116, 45 FR 63660 (September 25, 1980)). The FDIC finds no reason why banks' financial presentation should differ from other companies in the respects covered by the amendment. Accordingly, § 335.312 (Form F–2) and § 335.203 would be amended.

7. *Technical Amendments.* On November 13, 1980, the SEC amended its regulations to correct certain outdated references, inadvertent admissions and typographical errors and clarify certain terminology and instructions (SEC Rel. No. 34–17291, 45 FR 76974 (November 21, 1980)). The FDIC would make appropriate revisions to its regulations.

8. *Relationship with Accountants.* On January 28, 1982, the SEC amended its regulations relating to the relationship between registrants and independent accountants (SEC Rel. No. 34–18450, 47 FR 5404 (February 5, 1982)). The amendment rescinds the existing SEC rule requiring disclosure in proxy statements about non-audit services performed by independent accountants for their audit clients. The FDIC would amend its regulations to remove the requirement. Accordingly, § 335.212, item 8(f) would be eliminated.

B. SEC Amendments Not Proposed

1. *Management Remuneration.* On November 14, 1980, the SEC amended its regulations applicable to disclosure of management remuneration (SEC Rel. No. 34–17301, 45 FR 76982 (November 21, 1980)). The SEC has indicated that it intends to substantially revise its regulations on this subject in the near future. Because of the proximity of this major revision, the FDIC is not adopting the above SEC amendments.

2. *Beneficial Ownership Definition.* On December 4, 1980, the SEC amended its requirements relating to beneficial ownership. The amendment removed the availability of an exception to the requirement for filing an amendment under rule 13d–22(a). The rule provided that an amendment would not required if the acquisition of shares of a class, together with all other acquisitions during the preceding twelve months, did not exceed two percent of a class (SEC Rel. No. 34–17353, 45 FR 81556 (December 11, 1980)). In 1978, the SEC added the exception which it removed in the above action. The FDIC rules never contained the exception and therefore the SEC amendment is considered unnecessary.

3. *Small Issuer Exemption.* The SEC has provided an exemption from registration for issuers whose assets are less than $3,000,000 (SEC Rel No. 34–18647, 47 FR 17046 (April 21, 1982)). The FDIC staff is currently revising Part 335 under its statement of policy, Development and Review of FDIC Rules and Regulations ("Policy Statement"), 44 FR 76858 (December 28, 1979). The FDIC expects to publish a separate proposal concerning a small issuer exemption when that review is completed.

C. Certain Factors

1. *Competition.* As required by section 239a](2) of the Act, the SEC has specifically considered the impact which proposed amendment would have on competition and concluded that they imposed no significant burden on competition. In any event, the SEC determined that any possible burden would be outweighed by, and is necessary and appropriate to achieve, the benefits of the amendments to investors and registrants. The FDIC believes the amendment would have no effect upon competition. The FDIC requests comments concerning the impact these amendments may have upon competition.

2. *Alternatives Considered.* Section 12(i) of the Act requires the FDIC to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The FDIC has no reason to believe that these regulations are not applicable to the banking industry, thus it is proposing the amendments.

3. *Cost-Benefit Analysis.* As noted above, the amendments are required by statute. Therefore a cost-benefit analysis was not prepared. The FDIC feels that at this time it is not appropriate to utilize a flexible regulatory approach (small bank/large bank) since shareholders and investors in small banks have the need for the same quality information provided to shareholders and investors of large banks. The FDIC requests comments upon any increase in costs or additional burden the amendments may impose, which would not be outweighed by the benefits provided the bank, shareholders and the public. The FDIC is specifically requesting information from banks concerning projected start-up costs and continuing costs. To the extent feasible, these estimates should be allocated among the various new areas of regulation.

4. *Regulatory Flexibility Act.* The FDIC certifies that the proposal, if issued, would not have a significant economic impact on a substantial number of small banks or other entities. The proposal will affect less than 60 banks whose individual assets are no greater than $25 million.

5. *Comment Period.* The proposal will not be published for sixty days as generally required by the "Policy Statement" because the FDIC Board of Directors has determined that a comment period of 30 days is adequate for Part 335 proposals which do not present major new burdens upon issuer banks or others.

The proposal has already been subject to at least a 30-day comment period prior to the SEC adoption and a further 30-day delay prior to their effectiveness. With the addition of internal procedural requirements, publication of amendments conforming to new SEC rules is substantially delayed. This delay may deny investors or issuers the benefit of a new rule for unnecessary periods of time. It may also cause confusion when a transaction is subject to both sets of rules at the same time.

List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Reporting requirements, Securities.

Chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for Part 335 reads as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78/(i)).

2. Section 335.103 is amended: a. By removing "or" from the end of § 335.103(b)(2); b. by replacing the period at the end of § 335.103(b)(3) with a comma and "or"; c. by adding a § 335.103(b)(4); and d. by revising § 335.103(c)(3) as follows:

§ 335.103 Liability for forward-looking statements.

* * * * *

(b) * * *

(4) information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to any "Management's discussion and analysis of financial condition and results of operations," or any other supplementary financial information, and disclosed in a document filed with the FDIC, or in an annual report to shareholders meeting the requirements of § 335.203.

(c) * * *

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations; or

* * * * *

3. Section 335.203 is amended by revising paragraph (a) to read as follows:

§ 335.203 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders.

(1) The report shall include, for the bank subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years, and statements of income, changes in capital accounts and changes in financial position for each of the three most recent fiscal years, prepared in substantial compliance with subpart F of this part. Any financial statement schedules (except schedule VI) or exhibits or separate financial statements which may otherwise be required in filings with the FDIC may be omitted.

Note.—If the financial statements for a year prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders provided the bank has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant, and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant may be required in filings with the FDIC. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form F–2, the separate report of a predecessor accountant shall be filed in part II or in part IV as a financial statement schedule.

(2) Financial statements and notes thereto shall be presented roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-points.

(3) The report shall contain the information required by § 335.622(f)—Disagreements on accounting and financial disclosure matters, and § 335.622(g)—Disclosure of selected quarterly financial data in notes to the financial statements, unless such situation did not exist or the bank is otherwise exempt from making such disclosures.

(4)(i) The report shall contain Selected Financial Data in accordance with the provisions of item 6 of the form F–2(§ 335.312).

(ii) The report shall contain Management's Discussion and Analysis of the bank's financial condition and results of operations in accordance with the provisions of item 7 of the Form F–2(§ 335.312). Item 7 deals with results of operations.

(5) The report shall contain a brief description of the business done by the bank and its subsidiaries during the most recent year which will, in the opinion of management, indicate the general nature and scope of the business of the bank and its subsidiaries. The report shall contain information as comprehensive as that required by schedule III of format F–9E.

(6) The report shall contain information as comprehensive as that required by item 1(c) of Form F–2 regarding the bank's lines of business.

(7) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed. See the definition of "officers" at § 335.102(s).

(8) The report shall contain the market price of the bank's common stock and related security holder matters in accordance with the provisions of item 5 of Form F–2 (§ 335.312).

(9) The bank's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the bank's annual report on Form F–2, including the financial statements and the schedules thereto required to be filed with the FDIC under § 335.310 for the bank's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, a bank need not undertake to furnish without charge copies of all exhibits to its Form F–2, provided that the copy of the annual report on Form F–2 furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the bank will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the issuer's reasonable expenses in furnishing the exhibit. If the bank's annual report to security holders complies with all of the disclosure requirements of Form F–2 and is filed with the FDIC in satisfaction of its Form F–2 filing requirements, the bank need not furnish a separate Form F–2 to security holders who receive a copy of such annual report.

(10) Subject to the foregoing requirements, the report may be in a form deemed suitable by management and the information required by subparagraphs 4 to 9 may be presented in an appendix or other separate section of the report, provided that the attention

of security holders is called to such presentation.

Instruction. Banks are encouraged to utilize tables, schedules, charts, and graphic illustrations to present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(11) This § 335.203 shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the management's statement includes an undertaking in bold-face type to furnish such annual report to all persons being solicited at least 20 days before the date of the meeting.

* * * * *

4. Section 335.212 is amended: a. By removing item 8(f); b. by replacing instruction 2(c) of item 7(e) the $40,000 figure with "$50,000"; c. by revising instruction 4 in item 14(b); and d. by adding instruction 5 to item 14(b) as follows:

§ 335.212 Form for proxy statement (Form F-5).

* * * * *

Item 14 * * *

(b) * * *

Instructions * * *

4. Furnish the information required by item 7 of Form F-2 (§ 335.312).

5. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (1) a balance sheet of the bank (or the bank and its subsidiaries consolidated, if appropriate), (2) the balance sheets of the constituent businesses, (3) the changes to be effected in the succession, and (4) the pro forma balance sheet of the bank giving effect to the plan of succession. There shall also be filed in columnar form pro forma statements of income for the periods for which the results of operations of the acquired business would have been included in the bank income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

* * * * *

5. Section 335.221 is amended by revising item 4(b) to read as follows:

§ 335.221 Form for statement in election contests (Form F-6).

* * * * *

Item 4 * * *

(b) Furnish for yourself and your associates the information required by item 7 of Form F-5 (§ 335.212).

* * * * *

6. Section 335.309a is amended: a. By revising item 2; b. by removing instruction 7(c) to the Instructions as to Exhibits; and c. by adding instructions 8 and 9 to the Instructions as to Exhibits as follows:

§ 335.309a Form for registration of securities of a bank under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F-1).

* * * * *

Item 2. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Rules of Operations

Furnish in comparative columnar form a summary of selected financial data for the bank for (a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlight significant trends in the bank's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the bank's business, the following items shall be included in the summary: operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock) and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

3. Those banks which are required to provide five-year summary information in accordance with SFAS 33* may combine such information with the selected financial data appearing pursuant to this item.

4. All references to the bank in the summary and in these instructions shall mean the bank and its consolidated subsidiaries.

5. In addition, (a) if debt securities are registered under section 12 of the Act, the may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

6. Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in instructions 5 (a), (b) and (c) to this item 4 with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

7. Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the bank's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the bank has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

8. Describe the bank's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments. Also, describe any known material trends, favorable or unfavorable, in the bank's capital resources. Indicate any expected material changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off-balance sheet financing arrangement.

9. Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the bank's judgment, should be described in order to understand the bank's results of operations.

10. Describe any known trends or uncertainties which have had or which the bank reasonably expects will have a material favorable or unfavorable impact on net sales

* SFAS 33—Statement of Financial Accounting Standards No. 33, Financial Reporting and Changing Prices, published by the Financial Accounting Standards Board.

or revenues or income from continuing operations. If the bank knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in cosis of labor) the change in the relationship should be disclosed.

11. To the extent that financial statements disclose material increases in revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of services being sold or to the introduction of services.

12. For the three most recent fiscal years of the bank, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the bank has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the bank's revenues and on income from continuing operations.

13. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in item 6 of a Form F–2 may be necessary.

14. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the bank as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7 need only include that which is available to the bank without undue effort or expense but which does not clearly appear in the bank's financial statements.

15. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

16. Where the consolidated financial statements reveal materialchanges from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the bank's businesses as a whole; *provided, however,* if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Banks need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

17. The term "liquidity" as used in paragraph (a) of this item refers to the ability of a bank to generate adequate amounts of cash to meet the bank's needs for cash. Except where it is otherwise clear from the discussion, the bank should indicate those balance sheet conditions or income or cash flow items which the bank believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the bank's own business or businesses.

18. Banks are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in costs of labor. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See § 335.103.

19. Banks which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine such explanations with the bank's discussion and analysis required pursuant to this provision or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined the discussion of the impact of inflation otherwise required by this item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made. Foreign banks need not comply with SFAS 33 but if, in its home country, a foreign bank must satisfy requirements that are analogous to SFAS No. 33, then such analogous presentation shall be given.

20. Banks which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 (including foreign private banks) may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numeric financial data need be presented.

21. All references to the bank in the discussion and in these instructions shall mean the bank and its subsidiaries consolidated.

22. Foreign private banks should also discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors which have materially affected or could materially affect, directly or indirectly, company operations or investments by United States nationals.

* * * * *

Instructions as to exhibits * * *

8. A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement.

9. A statement setting froth in reasonable detail the computation of ratios of earnings to fixed charges which appears in the registration statement.

7. Item 1 in § 335.312 remains unchanged; the remainder of § 335.312 is revised to read as follows:

§ 335.312 Form for annual report of bank (Form F–2).

Form F–2—Annual Report Under Section 13 of the Securities Exchange Act of 1934

For the fiscal year ended ———————
FDIC Certificate No. ———————
(Exact name of bank as specified in its charter) ———————

(State or other jurisdiction of incorporation or organization) ———————
(I.R.S. Employer Identification No.)———————
(Address of principal office)———————

(ZIP Code)———————
Bank's telephone number, including area code ———————

Securities registered under section 12(b) of the Act:
Title of each class ———————
Name of each exchange on which registered

Securities registered under section 12(g) of the Act:
(Title of class) ———————
(Title of class) ———————

Indicate by check mark whether the bank (1) has filed all reports required to be filed by section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES— NO—.

State the aggregate market value of the voting stock held by nonaffiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing.———

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date. ———

Documents Incorporated by Reference

List hereunder the following documents if incorporated by reference and the part of the Form F–2 (e.g., part I, part II, etc.) into which the document is incorporated: (1) Any annual report to security holders; and (2) Any proxy or information statement. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

General Instructions

A. *Rule as to Use of Form F–2.*—This form shall be used for annual reports pursuant to section 13 of the Securities Exchange Act of 1934 (the "Act") for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by § 335.626 may, at the option of

the bank be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report.

B. *Application of other rules and regulations.*—Subparts A and C of Part 335 contain certain general requirements which are applicable to reports on a form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

C. *Preparation of report.*—(1) This form is not to be used a a blank form to be filled in, but only as a guide in the preparation of the report. Except as provided in general instruction F the answers to the items shall be prepared in the manner specified in § 335.361. The report shall contain the item numbers and captions of all items but the text of such items may be omitted.

(2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(3) Attention is directed to § 335.350, which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. *Signature and filing of report.*—Six complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as part thereof, shall be filed with the FDIC. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the FDIC and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures. The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report.

E. *Disclosure with respect to foreign subsidiaries.*—Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the bank. However, financial statements and financial statement schedules, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the FDIC. The FDIC may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Information to be incorporated by reference

(1) Attention is directed to § 335.353 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

(2) The information called for by parts I and II of this form [items 1 through 8 or any portion thereof] may, at the bank's option, be incorporated by reference from the bank's annual report to security holders furnished to the FDIC pursuant to § 335.203 or from the bank's annual report to security holders, even if not furnished to the FDIC pursuant to § 335.203 provided such annual report contains the information required by § 335.203.

Note.—In order to fulfill the requirements of part I of Form F–2 the incorporated protion of the annual report to security holders must contain the information required by items 1–4 of Form F–2 to the extent applicable.

(3) The information called for by part III (items 9 and 10) shall be incorporated by reference from the bank's definitive proxy statement (filed or to be filed pursuant to § 335.204(C) or definitive information statement (filed or to be filed pursuant § 335.204(C) which involves the election of directors, if such definite proxy statement or information statement is filed with the FDIC not later than 120 days after the end of the fiscal year covered by the Form F–2. However, if such definitive proxy or information statement is not filed with the FDIC in the 120-day period, the items comprising the part III information must be filed as part of the Form F–2, or as an amendment to the Form F–2 not later than the end of the 120-day period. It should be noted tht the information regarding executive offices called for by item 8 may be included in part I of Form F–2 under an appropriate caption.

(4) No item numbers or captions of items need be contained in the material incorporated by reference into the report. However, the bank's attention is directed to § 335.353(e) directed to regarding the specific disclosure required in the report concerning information incorporated by reference. When the bank combines all the information in Parts I and II of this form (items 1 through 8) by incorporation by reference from the bank's annual report to security holders and all of the information in part III of this form (items 9 and 10) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding general instruction C(1), this form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by part IV of this form, signatures, and a cross reference sheet setting forth the item numbers and captions in parts I, II and III of this form and the page and/or pages in the referenced materials where the corresponding information appears.

Part I—[See General Instruction F(2)]

* * * * *

Item 2—Properties

State briefly the location and general character, individually or by categories, of (a) properties held in fee, or leased, by the bank and its subsidiaries, in which the banking offices are located, indicating any major encumbrances with respect thereto, and (b) other physical properties of material value that are owned or leased by the bank or its subsidiaries. State the expiration dates of material leases. In the event aggregate annual rentals paid during the bank's last fiscal year exceeded five percent of its operating expenses, state the amount of such rentals and the average term of the leases pursuant to which such rentals were paid.

Instruction. What is required is such information as will reasonably inform investors as to the suitability, adequacy and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3—Legal proceedings

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the bank or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. Notwithstanding Instruction 2 to this item, administrative or judicial proceedings arising under Section 8 of the Federal Deposit Insurance Act shall be deemed material and shall be described.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the equity capital accounts of the bank and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Any material proceedings to which any director, officer or affiliate of the bank, any owner of record or beneficially of more than 5 percent of any class of voting securities of the bank, or any associate of any such director, officer or security holder is a party adverse to the bank or any of its subsidiaries or has a material interest adverse to the bank or any of its subsidiaries, also shall be described.

4. Notwithstanding the foregoing, if a receiver, fiscal agent or similar officer has been appointed for the bank or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental agency has assumed jurisdiction over substantially all of the assets or business of the bank or its

parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental body, identify the proceeding, the court or governmental body, the date jurisdiction was assumed, the identity of the receiver, fiscal agent or similar officer and the date of the person's appointment.

5. Discuss the extent of insurance coverage if appropriate to the type of proceeding.

Item 4—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d), (e) and (g) of Form F–5 at § 335.212.

Note.—The information required by item 5(e) of Form F–5 need not be included for any nominee for election as a director.

Part II—[See General Instruction F(2)]

Item 5—Market for the Bank's Common Stock and Related Security Holder Matters

(a) Identify the principal market or markets on which the bank's common stock is being traded and, if a principal market for such stock is an exchange, state the high and low sales prices for the stock as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market for such common stock is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is no market for such stock (excluding limited or sporadic quotations), furnish a statement to that effect.

(b) Set forth the approximate number of holders of common stock securities of the bank as of the latest practicable date.

(c) State the frequency and amount of any dividends declared during the past two years with respect to such common stock and briefly describe any restriction on the bank's present or future ability to pay such dividends. Where banks have a record of paying no dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists to make a statement of that fact in the filing. Banks which have a history of paying dividends are also encouraged to indicate whether there is a present expectation that dividends will continue to be paid in the future.

Instructions

1. The computation of the approximate number of holders of such common stock may be based upon the number of record holders or may also include individual participants in security position listings. See § 335.501(b)(8). The method of computation which is chosen should be indicated.

2. If the bank is a foreign bank: (a) Describe briefly any governmental laws, decrees or regulations in the country in which the foreign bank is organized relating to restrictions on the export or import of capital, including but not limited to foreign exchange controls, affecting the remittance of dividends, interest and other payments of nonresident holders of the foreign bank's securities.

(b) State whether there are any limitations, either by the law of the country under which the foreign bank is organized or in the charter or other constituent document of the foreign bank, on the right of foreigners to hold or vote securities. Outline briefly any such limitations.

(c) Outline briefly all taxes, including withholding provisions, to which United States security holders are subject under existing laws and regulations of the foreign country of origin. A brief description of pertinent provisions of any reciprocal tax treaties between such foreign country and the United States regarding withholding should be included. If there are no such treaties, so state.

Item 6—Selected Financial Data

Furnish in comparative columnar form a summary of selected financial data for the bank for:

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlight significant trends in the bank's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the bank's business, the following items shall be included in the summary: operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock); and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

3. Those banks which are required to provide five-year summary information in accordance with SFAS 33 may combine such information with the selected financial data appearing pursuant to this item.

4. All references to the bank in the summary and in these instructions shall mean the bank and its consolidated subsidiaries.

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations

Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a), (b) and (c) of this item with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

(a) *Liquidity*—Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the bank's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the bank has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(b) *Capital resources*—Describe the bank's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments. Describe any known material trends, favorable or unfavorable, in the bank's capital resources. Indicate any expected material changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off-balance sheet financing arrangement.

(c) *Results of operations*—Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the bank's judgment, should be described in order to understand the bank's results of operations. Describe any known trends or uncertainties which have had or which the bank reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the bank knows of events which will cause a material

change in the relationship between costs and revenues (such as known future increases in costs of labor) the change in the relationship should be disclosed. To the extent that the financial statements disclose material increases in revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of services being sold or to the introduction of new services. For the three most recent fiscal years of the bank, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the bank has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the bank's revenues and on income from continuing operations.

Instructions

1. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is revelant, reference to the five-year selected financial data appearing in item 6 of a Form F–2 may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the bank as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7 need only include that which is available to the bank without undue effort or expense but which does not clearly appear in the bank's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the bank's businesses as a whole; *provided, however,* if the cause for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Banks need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (a) of this item refers to the ability of a bank to generate adequate amounts of cash to meet the bank's needs for cash. Except where it is otherwise clear from the discussion, the bank should indicate those balance sheet conditions or income or cash flow items which the bank believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the bank's own business or businesses.

6. Banks are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in costs of labor. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See § 335.103.

7. Banks which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine such explanations with the bank's discussion and analysis required pursuant to this provision or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined the discussion of the impact of inflation otherwise required by this item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made. Foreign banks need not comply with SFAS 33 but if, in its home country, a foreign bank must satisfy requirements that are analogous to SFAS 33, then such analogous presentation shall be given.

8. Banks which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 (including foreign private banks) may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numeric financial data need be presented.

9. All references to the bank in the discussion and in these instructions shall mean the bank and its subsidiaries consolidated.

10. Foreign private banks should also discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors which have materially affected or could materially affect, directly or indirectly, company operations or investments by United States nationals.

Item 8—Financial Statements and Supplementary Data

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Subpart F governs the verification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position and the schedules to be filed in support thereof.

(a) *Financial Statements of the Bank*—(1) There shall be filed for the bank, in comparative columnar form, verified balance sheets as of the close of the last two fiscal years and verified statements of income for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

(2) Notwithstanding paragraph (1), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

(b) *Consolidated Statements*—There shall be filed for the bank and its majority-owned: (1) Bank premises subsidiaries, (2) subsidiaries doing a foreign banking business, and (3) significant subsidiaries, in comparative columnar form, verified consolidated balance sheets as of the close of the last two fiscal years of the bank and verified consolidated statements of income for such fiscal years.

(c) *Separate Statements of Unconsolidated Subsidiaries and Other Persons*—There shall be filed such other verified financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

(d) *Filing of Other Statements in Certain Cases*—The FDIC may, upon the informal written request of the bank and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The FDIC may also by informal written notice require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

Part III—[See General Instruction F(3)]

Item 9—Directors and Executive Officers of the Bank

(a) *Directors of the Bank.*—Set forth the same information as is required to be furnished by items 6(a), (b), (c) and (d) of Form F–5 at § 335.212.

Note.—The information required by items 6(a), (b), (c) and (d) of Form F–5 need not be included for any nominee for election as a director.

(b) *Principal Officers of the Bank.*—(1) *Principal officers.* List the names and ages of all principal officers of the bank and all persons chosen to become principal officers;

indicate all positions and offices with the bank held by each such person; state the person's term of office as officer and the period during which the person has served as such and briefly describe any arrangement or understanding between the person and any other person pursuant to which the person was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors of officers of the bank acting solely in their capacities as such.

2. No person chosen to become a principal officer who has not consented to act as such should be named in response to this item.

(2) *Significant employees.*—Where the bank employs persons such as special consultants who are not principal offices, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of principal officers.

(3) *Business experience.*—Give a brief account of the business experience during the past five years of each person chosen to become a principal officer, and each person named in answer to paragraph (2) of this item, including the person's principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When a principal officer or person named in response to paragraph (2) of this item has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. The requirement is information relating to the level of this person's professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) *Family relationships and involvement in certain legal proceedings.*—Set forth the same information as is required to be furnished by items 6(b) and (d) of Form F–5 at § 335.212 for each principal officer, person chosen to become a principal officer, and each person named in answer to paragraph (2).

Item 10—Management Remuneration and Transactions

Set forth the same information as is required to be furnished by item 7 Form F–5 at §335.212.

Part IV

Item 11—Exhibits, Financial Statement Schedules, and Reports on Form F–3

(a) *Contents.* List the following documents filed as a part of the report:

(1) All financial statements

(2) Those financial statement schedules required to be filed by item 8 of this form.

Instruction. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. For purposes of all rules concerning incorporation by reference a financial statement schedule shall constitute an "exhibit". See § 335.353.

(b) *Reports on Form F–3.* State whether any reports on Form F–3 have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

(c) *Exhibits.* The following exhibits shall be filed:

(1) *Articles of incorporation and bylaws*—whenever amendments to the articles or bylaws of the registrant are filed, there shall also be filed a complete copy of the articles or bylaws as amended.

(2) *Instruments defining the rights of security holders, including indentures.*

(3) *Material contracts*—(i) If the contract is such as ordinarily accompanies the kind of business conducted by the bank and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed, unless if falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of the fixed assets of the bank on a consolidated basis; or

(C) Any lease under which a significant part of the property described in the registration statement or report is held by the bank.

(ii) Any management contract or any remunerative plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except the following; not withstanding the above, any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(4) *Statement re computation of per share earnings*—A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report.

(5) *Statements re computation of ratios*—A statement setting forth in reasonable detail the computation of ratios of earnings to fixed charges which appears in the report.

(6) *Annual report to security holders*—The bank's annual report to security holders for its last fiscal year if all or a portion thereof are incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the FDIC and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed on one copy.

(7) *Letter re change in accounting principles*—Unless previously filed, a letter from the bank's independent accountant indicating whether any change in accounting principles of practices followed by the bank, or any change in the method of applying any such accounting principles or practices which affected the financial statements being filed with the FDIC in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable uder the circumstances. No such letter need to be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board requiring such a change.

(8) *Previously unfiled documents*—All contracts and other documents of a type required to be filed as an exhibit to an original registration statement on Form F–1 or a report on Form F–4 which were executed or in effect during the reporting period and not previously filed, as well as all amendments or modifications, not previously filed, to all exhibits previously filed with Forms F–1, F–2, and F–4.

(9) List all subsidiaries of the bank, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in § 335.102(ee).) This list should be repeated in each annual filing or an express reference made to the most recent filing containing a complete and accurate list.

Signatures—(See General Instruction D)

Pursuant to the requirements of section 13 of the Securities Exchange Act of 1934, the bank has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Bank) _____

By (Signature and Title)* _____

_____

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title)* _____

_____

(Date) _____

* * * * *

(Signature and Title)* _____

_____

(Date) _____

*Print the name and title of each signing officer under his signature.

8. In § 335.321 item 3 is revised to read as follows:

§ 335.321 Form for current report of a bank (Form F-3).

* * * * *

Item 3—Legal Proceedings

The description of legal proceedings shall include the information required by item 3 of Form F-2 at § 335.312. As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the bank and its subsidiaries.

Instruction. A legal proceeding need only be reported in the Form F-3 filed for the month in which it first became a reportable event and in subsequent months in which there have been material developments. Subsequent Form F-3 filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

* * * * *

9. Section 335.331 is revised to read as follows:

§ 335.331 Form for quarterly report of a bank (Form F-4).

Form F-4

Quarterly Report Under Section 13 of the Securities Exchange Act of 1934 for Quarter Ended ———
FDIC Insurance Certificate Number ———
(Exact name of bank as specified in its charter) ———
(State or other jurisdiction of incorporation or organization) ———
(I.R.S. Employer Identification No.) ———
(Address of principal executive offices) ———
(Zip Code) ———
Bank's telephone number, including area code ———
(Former name, former address and former fiscal year, if changed since last report) ———

Indicate by check mark whether the bank (1) has filed all reports required to be filed by section 13 of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the bank was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes — No —

Indicate the number of shares outstanding of each of the bank's classes of common stock, as of the latest practicable date.

A. Rule as to Use of Form F-4—(a) Form F-4 shall be used for quarterly reports under section 13 of the Securities Exchange Act of 1934, filed under § 335.330.

(b) A report on this form shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

B. Application of General Rules and Regulations—Particular attention is directed to § 335.360 which contains general requirements regarding matters such as the kind and size of paper to be used, the printing and the language; § 335.364 regarding the information to be given whenever the title of securities is required to be stated; and § 335.701 regarding the filing of the report. The definitions contained in § 335.102 should be especially noted.

C. Preparation of Report—(a) This is not a blank form to be filled in. It is a guide to be used in preparing the report in accordance with § 335.330. The FDIC does not furnish blank copies of this form to be filled in for filing.

(b) These general instructions are not to be filed with the report. The instructions to the various captions of the form are also to be omitted from the report as filed.

D. *Incorporation by Reference to Published Statements*—If the bank makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, such information may be incorporated by reference to such published statement if copies thereof are filed as an exhibit to this report.

E. *Signature and Filing of Report*—Six copies of the report shall be filed with the FDIC. At least one copy of the report shall be filed with each exchange on which any class of securities of the bank is listed and registered. At least one copy of the report filed with the FDIC and one copy filed with each such exchange shall be manually signed on the bank's behalf by a duly authorized officer of the bank and by the principal financial officer or chief accounting officer of the bank. Copies not manually signed shall bear typed or printed signatures.

Item 1—Financial Statements

(a) *Condensed statements.*—Interim financial statements shall follow the general form and content of presentation prescribed by subpart F of this Part 335 with the following exceptions:

(1) Interim financial statements required by this rule need only be provided as to the bank and its subsidiaries consolidated and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted.

(2) Interim balance sheets shall include only major captions prescribed by § 335.627A. Where any major balance sheet caption is less than 10 percent of total assets, and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(3) Interim statements of income shall also include major captions prescribed by § 335.627B. When any major income statement caption is less than 15 percent of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20 percent as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this text.

(4) The statement of changes in financial position may be abbreviated, starting with a single figure or funds provided by operations and showing other changes individually only when they exceed 10 percent of the average of funds provided by operations for the most recent three years.

(5) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. Banks may presume that users of the interim financial information have read or have access to the verified financial statements for the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest verified financial statements, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by § 335.621 or § 335.622, may be omitted. However, disclosure shall be provided where events subsequent to the end of the most recent fiscal year have occurred which have a material impact on the bank. Disclosures should encompass for example, significant changes since the end of the most recently completed fiscal year in such items as: accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new borrowings or modificaiton of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding the above, where material contingencies exist, disclosure of such matters shall be provided even though a significant change since year end may not have occurred.

(6) Detailed schedules otherwise required by § 335.626 may be omitted for purposes of preparing interim financial statements.

(b) *Other instructions as to content*—The following additional instructions shall be applicable for purposes of preparing interim financial statements:

(1) Summarized income statement information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements would otherwise be required for annual periods.

(2) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock and the basis of the earnings per share computation shall be stated together with the number of shares used in computation. The bank shall file as an exhibit, a statement setting forth in reasonable detail the computation of per share earnings, unless the

computation is otherwise clearly set forth in the report.

(3) If, during the most recent interim period presented, the bank or any of its consolidated subsidiaries entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(4) Where a material business combination accounted for as a purchase has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of the period being reported on. This pro forma information shall as a minimum show revenue, income before extraordinary items and the cumulative effect of accounting changes, including such income on a per share basis, and net income and net income per share.

(5) In addition to meeting the reporting requirements specified by existing standards for accounting changes, the bank shall state the date of any material accounting change and the reasons for making it. In addition, a letter from the registrant's independent accountant shall be filed as an exhibit in the first Form E–4 subsequent to the date of an accounting change indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(6) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with the effect thereof upon net income—total and per share—of any prior period included and upon the balance of undivided profits. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(7) The interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end.

(c) *Periods to be covered*—For filings on Form F–4, financial statements shall be provided as set forth below:

(1) An interim balance sheet as of the end of the most recent fiscal quarter and a balance sheet as of the end of the preceding fiscal year shall be provided. The balance sheet as of the end of the preceding fiscal year may be condensed to the same degree as the interim balance sheet provided. An interim balnce sheet as of the end of the corresponding fiscal quarter of the preceding fiscal year need not be provided unless necessary for an understanding of the impact of seasonal fluctuations on the bank's financial condition.

(2) Interim statements of income shall be provided for the most recent fiscal quarter, for the period between the end of the preceding fical year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ended during the most recent fiscal quarter and for the corresponding preceding period.

(3) Interim statements of changes in financial position and statements of changes in capital accounts shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ending during the most recent fiscal quarter and for the corresponding preceding period.

(d) *Review by independent public accountant*— The interim financial information included in filings with the FDIC need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the bank may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

(e) *Filing of other interim financial information in certain cases*—The FDIC may, upon the informal written request of the bank, and where consistent with the protection of investors, permit the omission of any of the interim financial information herein required or the filing in substitution therefor of appropriate information of comparable character. The FDIC may also by informal written notice require the filing of other information in addition to, or in substitution for, the interim information herein required in any case where such information is necessary or appropriate for an adequate presentation of the financial condition of any person for which interim financial information is required, or whose financial information is otherwise necessary for the protection of investors.

Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (1) and (2) below. The discussion and analysis shall include a discussion of material changes in the bank's liquidity, capital resources and results of operations.

(a) *Material changes in financial condition*—Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the year-end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the bank.

(b) *Material changes in results of operations*—Discuss any material changes in the bank's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. The discussion also shall cover material changes with respect to the most recent fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the bank has elected to provide an income statement for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions

1. In preparing the discussion and analysis required by this paragraph, the bank may presume that users of the interim financial information have read or have access to the discussion and analysis required in the bank's most recent Form F–2 or Form F–1.

2. The discussion and analysis required by this paragraph is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; *provided, however,* if the causes for a change in one line item also relate to other line items, no repetition is required. Banks need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the bank without undue effort or expense and which does not clearly appear in the bank's interim financial statements.

3. The bank's discussion of material changes in results of operations should identify any significant elements of the bank's income or loss from continuing operations which do not arise from or are not necessarily representative of the bank's ongoing business.

4. The bank should discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

5. Banks are encouraged but are not required to discuss forward-looking information.

Signatures

Under the requirements of the Securities Exhange Act of 1934, the bank has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

(Name of bank) _____

Date _____ (Signature) [1] _____

Date _____ (Signature) [1] _____

[1] Print name and title of signing officer under his signature.

10. Section 335.358 is revised to read as follows:

§ 335.358 Notification of inability to timely file all or any required portion of a Form F-2, F-4 or SEC Form 20-F.

(a) If all or any required portion of an annual report on Form F-2 or SEC Form 20-F or a quarterly report on Form F-4 required to be filed pursuant to section 13 of the Act and rules thereunder is not filed within the time period prescribed for such report, the bank, no later than one business day after the due date for such report, shall file a notification with the FDIC which shall contain disclosure of the inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the bank is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:

(1) The bank files a notification in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The bank represents in the notification that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the bank without unreasonable effort or expense; and

(ii) Either the subject annual report/portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report/portion thereof will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the bank to furnish any required opinion, report or certificate, the notification shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) If a notification filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the bank shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report in which includes the previously omitted information, the following statement:

The following items were the subject of a notification under § 335.358 and are included herein: (*List Item Numbers*)

11. In § 335.604, paragraph (f) is revised to read as follows:

§ 335.604 Examination by independent public accountants.

* * * * *

(f) *Examination of financial statements by more than one independent public accountant.* If, with respect to the examination of the financial statements, part of the examination is made by an independent accountant other than the principal accountant and the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in his report, the separate report of the other accountant shall be filed. However, notwithstanding the provisions of this section, reports of other accountants which may otherwise be required in filings need not be presented in annual reports to security holders furnished pursuant to the proxy and information statement rules.

By order of the Board of Directors, November 22, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82-32547 Filed 11-29-82; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, and 240

[Release Nos. 33-6438; 34-19259; File No. S7-953]

American Depositary Receipts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing: (1) A new form for registering Depositary Shares under the Securities Act of 1933 that would replace two existing forms; and (2) a rule that would allow depositaries to designate the date and time of effectiveness of registration statements filed on that form. These proposals would simplify and streamline the registration process of Depositary Shares, codify current practices, and eliminate obsolete provisions.

DATE: Comments should be submitted on or before January 4, 1983.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7-953. All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus ((202) 272-3246) or Ronald Adee ((202) 272-3250), Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing several changes in its regulation of American Depositary Receipts ("ADRs") that include (1) a definition of the term Depositary Shares; (2) new Form F-6 to consolidate and replace Forms S-12 (17 CFR 239.19) and C-3 (17 CFR 239.5) for the registration of Depositary Shares under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. III 1979]; and (3) Rule 465 that would permit depositary banks to designate, under certain circumstances, the effective date and time of registration statements filed on Form F-6.

The proposals are the result of a comprehensive review of ADRs intended to delete obsolete provisions, codify current practice, and to streamline the procedures. For clarification, the Commission is proposing a definition of Depositary Share.

Current Forms S-12 and C-3 under the Securities Act are proposed to be consolidated into new Form F-6.[1] Form S-12 is available if the underlying shares are offered or sold in transactions exempt from registration and Form C-3 is available in other situations. Proposed Form F-6 would be available if the underlying securities are exempt from registration or are registered on another form.

Depositary banks are required to furnish the Commission with a copy of the materials received in their capacity as a shareholder. Many foreign issuers for which ADRs are available establish the information-supplying exemption under Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) that requires the issuer to furnish the Commission with the investment information made public in its country of domicile or sent to its shareholders. In order to eliminate the substantial duplication in the materials submitted by the depositary banks and the foreign issuer, Form F-6 would require that the foreign private issuer either be subject to the periodic reporting requirements of

[1] If proposed Form F-6 is ultimately adopted, various rules referring to Forms S-12 and C-3 would be amended to refer to Form F-6.

the Securities Exchange Act (the "Exchange Act"), 15 U.S.C. 78a et seq., or establish the information-supplying exemption. Therefore the foreign issuer would be obligated to furnish the information and the depositary bank would have no such duty.

The depositary bank undertakes to furnish semi-annually to the Commission certain information concerning the ADRs. The proposal would require an additional item of information, i.e., the total number of ADR holders. The proposals would clarify the signature requirements of Form F-6. Proposed Rule 15d-3 would codify the exemption from Section 15(d) of the Exchange Act.

The required disclosure in the prospectus is a summary of the terms of deposit, a requirement that is not proposed to be changed. Because the terms of deposit are virtually identical in most filings, the Commission is proposing Rule 465, modelled on Rule 487 (17 CFR 230.487)[2] that would permit the depositary bank to designate the date and time for a filing on Form F-6 to be effective if the depositary bank certifies that the terms of deposit are identical to a previous registration statement on Form S-12 or F-6. The proposed rule would reduce the paperwork and staff time involved in the review of such registration statements. Because the disclosure in such registration statements rarely changes, an inordinate amount of staff is consumed in reviewing such registration statements in view of the minimal benefits derived.[3]

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the addition of the proposals, if adopted.

Pursuant to Section 23(a)(2) of the Securities Exchange Act of 1934, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

[2] Rule 487 permits certain unit investment trusts to designate the date and time of effectiveness of registration statements for a series of such trust if the Commission declared effective the initial registration statement of the series and if the portfolio securities deposited in the series do not materially differ in type or quality. Release No. 33-6401 (May 7, 1982) [47 FR 20290].

[3] The proposed rule would allow the Commission, in certain circumstances, to suspend the ability of a depositary to designate the effective date and time. If the proposal is adopted, the Commission would likely delegate this authority to the Director of the Division of Corporation Finance.

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

Securities, Reporting requirements.

Text of Proposals

17 CFR Chapter II is proposed to be amended as follows:

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

1. By revising paragraph (a) of § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.

(a) No prospectus need be delivered if the registration statement is on Form F-6 (§ 239.36 of this chapter).

* * * * *

2. By adding the definition of "Depositary Share" after the definition of "Control" in § 230.405 to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Depositary Share. The term "depositary share" means a share, evidenced by an American Depositary Receipt, that represents a multiple of or fraction of a foreign share deposited with a depositary.

* * * * *

3. By revising paragraph (j) of § 230.457 to read as follows:

§ 230.457 Computation of fee.

* * * * *

(j) Notwithstanding the other provisions of this rule, the proposed maximum aggregate offering price of American Depositary Receipts representing Depositary Shares shall, only for the purpose of calculating the registration fee, be computed upon the basis of the maximum aggregate fees or charges to be imposed in connection with the issuance of such receipts.

* * * * *

4. By adding § 230.465 to read as follows:

§ 230.465 Effective date of certain registration statements on Form F-6.

(a) A depositary that previously has filed a registration statement on Form S-12 or Form F-6 (§ 239.36 of this chapter) may designate a date and time for a registration statement (including post-effective amendments) on Form F-6 to become effective and such registration statement shall become effective in accordance with such designation if the following conditions are met:

(1) The depositary previously has filed a registration statement on Form S-12 or Form F-6 (§ 239.36 of this chapter), which the Commission has declared effective, with identical terms of deposit and the depositary so certifies in the registration statement; and

(2) The designation of the effective date and time is set forth on the facing-page of the registration statement, or in any pre-effective amendment thereto. A pre-effective amendment containing such a designation properly made shall be deemed to have been filed with the consent of the Commission.

(b)(1) The Commission may, in the manner and under the circumstances set forth in paragraph (b)(2) of this section, suspend the ability of a depositary to designate the date and time of effectiveness of a registration statement, and such suspension shall remain in effect until the Commission furnishes written notice to the depositary that the suspension has been terminated. Any suspension, so long as it is in effect, shall apply to any registration statement that has been filed but has not, at the time of such suspension, become effective and to any registration statement the depositary files after such suspension. Any such suspension applies only to the ability to designate the date and time of effectiveness under paragraph (a) of this section and does not otherwise affect the registration statement.

(2) Any suspension under paragraph (b)(1) of this section becomes effective when the Commission furnishes written notice thereof to the depositary. The Commission may issue a suspension if it appears to the the Commission: (i) That any registration statement containing a designation under this section is incomplete or inaccurate in any material respect, whether or not such registration has become effective, or (ii) that the depositary has not complied with any of the conditions of this section. The depositary may petition the Commission to review the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.5 [Removed]

5. By removing § 239.5

§ 239.19 [Removed]

6. By removing § 239.19.

7. By adding registration statement Form F-6 (§ 239.36) to read as follows (The Form does not appear in the Code of Federal Regulations):

§ 239.36 Form F–6, for registration under the Securities Act of 1933 of depositary shares represented by American Depositary Receipts.

Form F–6 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of depositary Shares evidenced by American Depositary Receipts ("ADRs") issued by a United States depositary against the deposit of the securities of a foreign issuer (regardless of the physical location of the certificates) if the following conditions are met:

(a) The holder of the ADRs may withdraw the deposited securities at any time subject only to: (1) Temporary delays caused by closing transfer books or the deposit of shares in connection with voting at a shareholders' meeting, or the payment of dividends, (2) the payment of fees, taxes, and similar charges, and (3) compliance with any laws or governmental regulations relating to the withdrawal of deposited securities; and

(b) The deposited securities are offered or sold in transactions registered under the Securities Act or in transactions that would be exempt therefrom if made in the United States; and the issuer of the deposited shares is reporting pursuant to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or is exempt therefrom by Rule 12g3–2(b) (§ 240.12g3–2(b) of this chapter).

Securities and Exchange Commission

Form F–6—Registration Statement Under the Securities Act of 1933 for Depositary Shares Represented by American Depositary Receipts

(Exact name of registrant as specified in its charter)

(Translation of registrant's name into English)

(Jurisdiction of incorporation or corporation)

(Exact name of depositary as specified in its charter)

(Address, including zip code, and telephone number, including area code, of depositary's principal executive offices)

(Address, including zip code, and telephone number, including area code, of agent for service)

It is proposed that this filing become effective under Rule 465 (check appropriate box):

[ ] immediately upon filing

[ ] on (Date) at (Time).

If a separate registration statement has been filed to register the deposited shares, check the following box. [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum aggregate price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Form F–6—General Instructions

I. Eligibility Requirements for Use of Form F–6

A. General. Form F–6 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of Depositary Shares evidenced by American Depositary Receipts ("ADRs") issued by a United States depositary against the deposit of the securities of a foreign issuer (regardless of the physical location of the certificates) if the following conditions are met:

(1) The holder of the ADRs may withdraw the deposited securities at any time subject only to (i) temporary delays caused by closing transfer books or the deposit of shares in connection with voting at a shareholders' meeting, or the payment of dividends, (ii) the payment of fees, taxes, and similar charges, and (iii) compliance with any laws or governmental regulations relating to the withdrawal of deposited securities; and

(2) The deposited securities are offered or sold in transactions registered under the Securities Act or in transactions that would be exempt therefrom if made in the United States; and the issuer of the deposited shares is reporting pursuant to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or is exempt therefrom by Rule 12g3–2(b) (§ 240.12g3–2(b) of this chapter).

B. Registration of Deposited Securities. Form F–6 is available for registration of the Depositary Shares only. The registration of the deposited securities, if necessary, shall be on any other form the registrant is eligible to use.

II. Amount of Securities; Filing Fee

An ADR evidences a Depositary Share, as defined in Rule 405 (§ 230.405 of this chapter). The registration statement relates to Depositary Shares, not the number of physical certificates issued. For example, if an ADR is issued against a Depositary Share, which equals two common shares in a foreign issuer, the registration of 100,000 Depositary Shares represents 200,000 common shares. If the depositary issues a certificate for 10,000 Depositary Shares and another for 15,000 Depositary Shares, then 75,000 (100,000 minus 25,000) Depositary Shares (not 99,998) remain available for distribution under the registration statement. Rule 457(j) (§ 230.457(j) of this chapter) describes the method of computing the filing fee.

III. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C (§ 230.400 et seq. of this chapter). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. The prospectus may consist of the ADR certificate if it includes the information required in Part I of this Form. Such prospectus need not conform to the requirements of Rule 420 (§ 240.420 of this chapter) except that the type shall be roman type at least as large as 8-point modern type.

C. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (§ 230.402 and § 230.472 of this chapter) shall be filed with the Commission except that the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three.

Part I. Information Required in Prospectus

Item 1. Description of Securities To Be Registered

Furnish the information required by Item 202(f) of Regulation S–K (§ 229.202(f) of this chapter).

Item 2. Available Information

State the information in either (a) or (b) below, whichever is applicable, and that the documents described therein can be inspected by holders of ADRs and copied at public reference facilities maintained by the Commission in Washington, D.C.

(a) The foreign issuer furnishes the Commission with certain public reports and documents required by foreign law or otherwise under Rule 12g3–2(b) under the Securities Exchange Act of 1934.

(b) The foreign issuer is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 and, accordingly, files certian reports with the Commission.

Part II. Information Not Required in Prospectus

Item 3. Exhibits

Subject to the rules as to incorporation by reference, the exhibits specified below shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing.

(a) A copy of the Deposit Agreement or Deposit Agreements under which the securities registered hereunder are issued. If the Deposit Agreement is amended during the offering of the Depositary Shares, such amendments shall be filed as a post-effective amendment to the registration statement.

(b) Any other agreement in which the depositary is a party relating to the issuance of American Depositary Receipts or the custody of the deposited securities.

(c) Every material contract relating to the deposited securities between the depositary and the issuer of the deposited securities in effect at any time within the last three years.

(d) An opinion of counsel as to the legality of the securities being registered, indicating whether they will when sold be legally issued, and entitle the holders thereof to the rights specified therein.

(e) Furnish the name of each dealer known to the registrant or depositary who (1) has deposited shares against issuance of American Depositary Receipts within the past six months, (2) proposes to deposit shares against issuance of American Depositary Receipts, or (3) assisted or participated in the creation of the plan for the issuance of the American Depositary Receipts or the selection of the deposited securities. As to each such person indicate the number of securities proposed to be deposited to the extent known. The information furnished pursuant to this item is not to be deemed "filed" as part of the registration statement.

Item 4. Undertakings

Notwithstanding the provisions of Rule 415(a)(2) (§ 230.415(a)(2) of this chapter), the undertakings in Item 512(a) of Regulation S-K are not required. Furnish the following undertakings:

(a) The depositary undertakes to furnish promptly the following information to the Commission semi-annually, beginning on or before six months after the effective date of the registration statement:

(1) The following information in substantially the tabular form indicated:

Number of Depositary Shares represented by Receipts issued during period covered by report	Number of Depositary shares represented by Receipts retired during period covered by report	Total Amount of Depositary Shares represented by Receipts remaining outstanding	Total number of holders of Receipts

(2) The name of each dealer known to the registrant or depositary depositing shares against issuance of American Depositary Receipts during the period covered by the report.

(b) The depositary hereby undertakes to make available at the principal office of the depositary in the United States, for inspection by holders of the American Depositary Receipts, any reports and communications received from the issuer of the underlying securities which are both (1) received by the depositary as the holder of the deposited securities; and (2) made generally available to the holders of the underlying securities by the issuer.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that all the requirements for filing on Form F-6 are met and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19—.

[Legal entity created by the agreement for the issuance of American Depositary Receipts for shares of ———.]

By [Signature and Title]———

[Registrant] ———

By [Signature and Title]———

Certification under Rule 465

The depositary, ———, represents and certifies the following:

(1) That it previously had filed a registration statement on Form S-12 or F-6 (Name and File Nos.), which the Commission declared effective, with terms of deposit identical to the terms of deposit of this registration statement;

(2) That its ability to designate the date and time of effectiveness under Rule 465 has not been suspended.

[Depositary] ———

By [Signature and Title]———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

[Signature] ———

[Title]———

[Date]———

Instructions. 1. The legal entity created by the agreement for the issuance of ADRs shall sign the registration statement as registrant. The depositary may sign on behalf of such entity, but the depositary itself shall not be deemed to be the registrant. If the issuer of the deposited securities sponsors the ADR arrangement, the registration statement shall also be signed by the issuer and its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons perfoming similar functions, and its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

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

8. By adding § 240.15d-3 to read as follows:

§ 240.15d-3 Reports for depositary shares registered on Form F-6.

Annual and other reports are not required with respect to Depositary Shares registered on Form F-6 (§ 230.36 of this chapter) if the depositary furnishes the information required by Item 4(a) of that Form. The exemption in this rule does not apply to any deposited securities registered on any form under the Securities Act of 1933.

Statutory Basis

These amendments are proposed pursuant to authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) of the Securities Exchange Act of 1934.

(Secs. 6, 7, 8, 10, 19(a) 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78*o*(d), 78wa))

By the Commission.

George A. Fitzsimmons,

Secretary.

November 19, 1982.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C 605(b), that the proposed revisions relating to the registration of depositary shares contained in Securities Act Release No. 6438 (November 19, 1982), concerning American Depositary Receipts ("ADRs") will not, if promulgated, have a significant economic impact upon a substantial number of small entities. The entities that might be affected by the adoption of the proposed rule are the banks that act as depositaries for ADRs ("depositary banks") and the issuers of the underlying shares ("foreign issuers"). The reason for this certification is that, whatever the effects of the proposed rule, an insubstantial number of depositary banks and foreign issuers are small entities as defined in 17 CFR 240.0–10.

John S.R. Shad,

Chairman.

November 19, 1982.

[FR Doc. 82-32633 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 271 and 274

[Docket No. RM83-3-000]

Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978

Issued: November 23, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978. This proposal

would amend Parts 271 and 274 of the Commission's regulations by eliminating certain types of applications for well category determinations and reducing the information to be filed with other well category determination applications. Specifically, the Commission proposes, among other things, procedures which would eliminate determinations on a well-by-well basis for new OCS leases under section 102, eliminate multiple applications for certain proration units in new onshore production wells under section 103, eliminate applications for requalification as a stripper well under section 108, and eliminate applications under section 107 for deep gas produced from certain completion locations. This proposal is part of the Commission's ongoing program to review its filing requirements and reduce unnecessary burdens on regulated entities by eliminating unnecessary filing requirements.

DATE: Comments must be received on or before January 7, 1983. Requests for oral presentation must be received on or before December 14, 1982.

ADDRESS: Comments and requests for oral presentation should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket No. RM83–3–000.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, Room 8100, 825 North Capitol St., N.E., Washington, D.C. 20426 (202) 357–8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432 (Supp. IV 1980), for new natural gas and gas produced from new Outer Continental Shelf leases (NGPA section 102), new onshore production wells (NGPA section 103), high-cost natural gas (NGPA section 107), and stripper well natural gas (NGPA section 108). The proposal would eliminate the need for filing certain types of applications for well category determinations and would reduce the information to be filed with other well category determination applications.

The Commission proposes eliminating the filing of applications in four situations. First, the Commission proposes an expedited procedure which would allow the U.S. Department of Interior, Minerals Management Service, to make only one determination for all wells drilled on a new Outer Continental Shelf (OCS) lease; the Commission currently requires applications to be filed for each well. Second, the Commission proposes that an application for a section 103 determination apply to gas from any proration unit in the well that either has a well completion permit or receives at any time after the determination a well completion permit from the appropriate agency. A second section 103 filing would be required only when the well is the second well in a given proration unit. The Commission currently allows applications only for completions in proration units which have a well completion permit at the time the application for determination was made. Third, the Commission proposes eliminating the existing requirement that a new application be filed to requalify a well as a stripper well after being disqualified for exceeding the applicable natural gas production limit. Fourth, the Commission proposes eliminating applications for deep gas produced from completion locations deeper than a completion location that previously has received a final determination that the completion location qualifies as section 107 deep gas.

The Commission also proposes eliminating the requirement that certain types of information be filed with applications. For the most part, this information includes location plats, directional drilling surveys, maps, and certified copies of certain records.

This proposal is part of the Commission's ongoing program to review its filing requirements and reduce unnecessary burdens on regulated entities by eliminating requirements that are not necessary to the performance of the Commission's regulatory responsibilities. If adopted, this proposal would reduce the annual burden imposed by the filing requirements for well category determinations by approximately twenty-five percent.

II. Background

The NGPA requires that the appropriate state or federal agency (jurisdictional agency) make a well category determination (determination) that natural gas meets the qualifications of one of the pricing categories found in NGPA sections 102, 103, 107, and 108 in order for a producer to collect the maximum lawful price authorized for that category.[1] The jurisdictional agencies' well category determinations are submitted to the Commission for review,[2] and are reversed by the Commission if not supported by substantial evidence in the record.

The Commission implemented this statutory scheme by issuing regulations prescribing both the minimum filing requirements for applications for well category determinations and the procedures to be used by the Commission to review such determinations.[3] Because the NGPA comprehensively revised the scheme for natural gas pricing, the Commission's regulations adopted a cautious approach to implementing the statute. Since these regulations were issued, the Commission, jurisdictional agencies, and producers have gained considerable experience under this regulatory scheme. Based on this experience and as part of its burden reduction program, the Commission has reevaluated its filing requirements. It is proposing to refine its implementation of the NGPA well category determination process and reduce the burden imposed on both the natural gas producers and jurisdictional agencies.

III. Discussion

The Commission proposes two general types of changes in its filing requirements. The first type would eliminate certain applications for well category determinations under several

[1] Other categories of natural gas are self-implementing and do not require a determination by a jurisdictional agency prior to qualifying for the ceiling price for that category. These are sections 104, 105, 106, and 109.

[2] These determinations become final 45 days after receipt by the Commission, unless within that time period, the notice of determination or the application for a determination is withdrawn (18 CFR 275.202 (c) and (d) (1982)) or the Commission makes a finding that the determination is either incomplete (*id.* at § 275.202(b) (1982)) or is not supported by substantial evidence in the record on which the determination was made or is not consistent with information in the Commission's public record and which was not part of the record on which the determination is made. (*Id.* at § 275.202(a) (1982)).

[3] Interim regulations were issued on December 1, 1978. Interim Regulations Implementing the Natural Gas Policy Act of 1978, Docket No. RM79–3, issued December 1, 1978, 43 FR 56,448 (December 1, 1978). Final regulations were issued thereafter. Final Regulations Implementing Filing Requirements of the Natural Gas Policy Act of 1978, Order No. 65, Docket No. RM80–15, issued January 4, 1980, 45 FR 3890 (January 21, 1980); Minimum Filing Requirements for Applications to Jurisdictional Agencies for Determinations of Eligibility for Various Categories of Natural Gas, Order No. 65A, Docket No. RM80–15, issued February 29, 1980, 45 FR 15523 (March 11, 1980) and 45 FR 45905 (July 8, 1980); Commission Determinations and Review of Jurisdictional Agency Determinations, Order No. 34, Docket No. RM79–3, issued June 14, 1979, 44 FR 34475 (June 15, 1979); Final Part 275 Regulations under the Natural Gas Policy Act of 1978, Order 34(R), Docket No. RM79–3, issued August 13, 1979, 45 FR 17129 (March 18, 1980).

NGPA sections. The second type would eliminate the filing of certain geologic or geographic information and certified copies of certain records for applications under several NGPA categories. Based on its experience in reviewing well category determinations and its field audit program, the Commission believes that these application and information requirements are not necessary for an effective NGPA compliance program and are, therefore, an unnecessary burden on regulated entities. Additionally, the Commission believes that the filing requirements which would remain if these proposals are adopted would be sufficient to establish that a well category determination is supported by substantial evidence in the record. The Commission requests comments on this issue.

A. Elimination of Certain Applications for Well Category Determinations

1. *New OCS Lease.* Natural gas produced from a new lease [4] on the Outer Continental Shelf (OCS) qualifies as new natural gas under section 102 of the NGPA. The Commission's current practice in implementing section 102 requires that a separate application and well category determination be made for each well drilled on a new OCS lease. *See* 18 CFR 274.202 (a) and (b)(1982).

The Commission proposes two changes in the regulatory scheme relating to new OCS leases. First, the Commission would require only one determination for all gas produced on a new OCS lease. The Commission believes that well-by-well determinations are not statutorily required. Section 102(c)(1)(A) of the NGPA covers natural gas "produced from a new lease," rather than gas produced from a "well," as does, for example, the definition of "new onshore production wells" in section 102(c)(1)(B). The Commission also believes that rendering determinations on a well-by-well basis on a new OCS lease is unnecessary and burdensome because *any* well drilled on a new OCS lease will comply with the requirements of the NGPA and qualify for the section 102 price. Accordingly, the Commission proposes eliminating the requirement that a determination be made for each well on an OCS lease.[5]

The second change proposes an expedited procedure for making such determinations. After drilling and completing a well on a new OCS lease, a producer currently must file an application (FERC Form No. 121), an oath statement, and a copy of the OCS lease, to qualify production from the well for the section 102 price. In lieu of these filing requirements, the proposal would allow the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas would be gas produced from a new OCS lease. The proposal would require the jurisdictional agency (U.S. Department of Interior, Minerals Management Service (MMS)) to file within 60 days of the grant of the lease a notice of determination which would include the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination would then be subject to Commission review in the same manner as other jurisdictional agency determinations. 18 CFR 275.201 through 275.206 (1982).[6]

2. *New Onshore Production Wells.* Natural gas produced from wells which meet certain definitional criteria set forth in section 103 of the NGPA can qualify as natural gas produced from a new onshore production well. These criteria relate to the date the well was drilled, well-spacing requirements, and certain proration unit [7] restrictions.[8] The Commission's regulations implementing section 103 do not define the term "new onshore production well," but rather incorporate by reference the statutory definition in section 103(c) of the NGPA. 18 CFR 271.303 (1982).

In Order No. 149, the Commission clarified its regulations implementing section 103 and stated that a determination was required for each proration unit in which a well was completed in order to collect the section 103 price for gas produced from that proration unit.[9] The Commission reasoned that a determination was necessary for each proration unit producing in a wellbore in order to assure that the proration unit did not violate the proration unit restrictions in section 103(c)(3).

The interpretation of section 103 in Order No. 149 requires separate applications to qualify gas produced from different proration units in the same wellbore. The Commission is concerned that separate applications for each proration unit may result in an unwarranted burden on jurisdictional agencies, the Commission, and on parties involved in these multiple proceedings. Accordingly, the Commission is seeking to amend its requirements to reduce burden while ensuring that the section 103 price is not collected for any gas which does not qualify under the applicable standards.

Specifically, the Commission proposes that a jurisdictional agency determination that a well is a "new, onshore production well" will cover all

[4] NGPA section 2(9) defines "new lease," as an OCS lease entered into on or after April 20, 1977 on submerged acreage. 15 U.S.C. 3301(9) (Supp. IV 1980).

[5] The Amoco Production Company (Amoco) recently filed a petition for a rulemaking to establish an exemption from the requirement that a producer apply for a certificate under section 7 of the Natural Gas Act (NGA) for jurisdictional sales of gas where such gas is subject to a pending well category determination under the NGPA. *See* "Petition of Amoco Production Company for Initiation of Rulemaking to Establish Statutory Exemption from Natural Gas Act Certificate Requirement or, in the Alternative, for Institution of Blanket Certificate Program," Docket No. RM82-15, filed February 5, 1982. Under section 601(a)(1)(B) of the NGPA, a well category determination would render such gas free from NGA jurisdiction. Many certificate applications of this type are applications for wells drilled on a new OCS lease. If the Commission adopts the proposal that new OCS lease determinations be made on a lease-by-lease basis, it will eliminate these instances in which a certificate under section 7 of the NGA is now required. Because the number of other situations where section 7 certificates are needed is small, the Commission is not now inclined to propose a rule which would eliminate the need for a section 7 certificate in each instance in which a well category determination will render gas free from NGA jurisdiction. While the Commission intends to issue a separate order in the Amoco docket, the Commission intends to consider, in this rulemaking, the issues and recommendations raised by Amoco that are relevant to this rulemaking.

[6] In order to allow new OCS leases which have been granted by MMS prior to the issuance of a final rule, if promulgated, to take advantage of this burden reduction, the Commission proposes to request MMS to file a blanket notice of determination identifying all OCS leases which were granted on or after April 20, 1977, within 60 days from the date a final order is issued in this proceeding.

[7] NGPA section 2(8) defines proration unit. In brief, a proration unit is part of a reservoir which a state or federal jurisdictional agency determines can be efficiently drained by a single well.

[8] Section 103(c) defines "a new, onshore production well" in the following manner:

"(c) *Definition of New Onshore Production Well*—For purposes of this section, the term "new, onshore production well" means any new well (other than a well located on the Outer Continental Shelf)—

"(1) The surface drilling of which began on or after February 19, 1977;

"(2) Which satisfies applicable Federal or State well-spacing requirements, if any; and

"(3) Which is not within a proration unit—

"(A) Which was in existence at the time the surface drilling of such well began;

"(B) Which was applicable to the reservoir from which such natural gas is produced; and

"(C) Which applied to a well (i) which produced natural gas in commercial quantities or (ii) the surface drilling of which was begun before February 19, 1977, and which was thereafter capable of producing natural gas in commercial quantities."

[9] Clarification of Regulations Regarding New, Onshore Production Wells, Order No. 149, Docket No. RM81-31, issued May 28, 1981, 46 FR 29,697 (June 3, 1981). Applications for rehearing of Order No. 149 have been filed and are pending before the Commission.

gas from the well provided that the gas is produced from a proration unit which has received a well completion permit or receives in the future a well completion permit from the appropriate regulatory agency (permitting agency) and that the gas is produced from a proration unit in which the subject well is the first well completed in that unit. If the permitting agency issues a well completion permit for a completion location in a proration unit in which the section 103 well is the first well completed, no new application would be required because the initial determination would cover all production from proration units in the well that were authorized by a well completion permit and the well is the first well completed in such proration unit.[10] A producer would not be allowed automatically to collect the section 103 price for production from a proration unit in which the subject well is the second well completed even if a well completion permit is granted for this proration unit.

The Commission believes that this proposal will eliminate the need for most multiple applications for different proration units completed within the same wellbore and, thus, would reduce the burden imposed by the Commission's regulations relating to the filing requirements for section 103 well category determinations.[11] Additionally, the Commission believes that this proposal ensures that the section 103 price is collected only for gas which meets the three requirements in section 103 (c)(1) through (c)(3): Date of commencement of surface drilling, well-spacing requirement, and proration unit restrictions.

This proposal ensures that the surface drilling requirement is met by reference to the initial determination. The original determination made by the jurisdictional agency and reviewed by the Commission ensures that all gas produced from the well, regardless of the proration unit from which it is produced, will be from a well the surface drilling of which commenced "on or after February 19, 1977."

The second requirement—compliance with state or federal well-spacing requirements—is met by allowing the section 103 determination to cover only proration units for which a well completion permit has been or will be granted. The purpose of the well-permitting process generally is to ensure that well-spacing requirements are met. Thus, the grant of a well completion permit to complete a well at a certain location ensures that a producer has met the section 103 requirement relating to compliance with well-spacing requirements.

Finally, the third requirement relating to proration unit restrictions is satisfied by the requirement that the otherwise qualified well be the first well completed in the proration unit for which the permit is granted. Under the NGPA and the Commission's current regulations, the criterion of section 103(c)(3) relating to proration unit restrictions will be satisfied in two situations. First, a well that is the first well in a proration unit will satisfy by definition the NGPA's proration unit restrictions. Second, if a well is the second well completed in a proration unit, the proration unit restrictions can only be satisfied if the "well is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit * * *" 18 CFR 271.305(b) (1982). In the second instance, a new section 103 application, including the "effective and efficient" finding, would have to be made. Because the proposed rule would only cover a proration unit if the otherwise qualified well were the first well completed in the proration unit, this third criterion is satisfied.

Because it may be possible that a permitting agency could in some instances grant a well completion permit for a proration unit which did not comply with the section 103(c)(3) proration unit restrictions, the Commission is concerned that unless it requires a new application when the otherwise qualified well is the second well completed in the proration unit, some producers might collect the section 103 price for natural gas that does not satisfy the section 103 requirements. The Commission, therefore, is proposing to limit its revised procedures only to the first well completed in a proration unit. It may, however, be that the Commission could rely on the well completion permitting process to ensure that well completion permits would only be granted when the second well completed in the proration unit is necessary to "effectively and efficiently" drain the unit. The Commission requests comments on all aspects of this proposal, especially regarding the appropriateness of relying on the well permitting process to ensure compliance with the section 103(c)(3) criterion relating to proration unit restrictions.[12]

3. *Stripper Well Natural Gas.* Under section 108(b) of the NGPA, a well which produces an average of 60 Mcf or less a day of nonassociated natural gas for a 90-day production period (60 Mcf limit) can qualify as a stripper well under section 108 of the NGPA.[13] Under the Commission's current regulations implementing section 108, a well loses ist qualification as a stripper well, and the seller can no longer collect up to the section 108 price, if the well subsequently produces more than 60 Mcf of natural gas for the relevant production period.[14] If the well's production again falls within the 60 Mcf limit, it can requalify as a stripper well provided the applicant files for and obtains a new section 108 well category determination.

The Commission has observed that a stripper well's production often fluctuates around the limit of 60 Mcf of natural gas per production day. Multiple applications have been filed for many stripper wells when the wells temporarily exceeded the statutory limit and subsequently produced under this limit. The regulations, as currently

[10] Under the Commission's regulations implementing section 315 of the NGPA, certain producers are required to make a "bona fide offer" within 45 days of a "final determination" that natural gas qualifies as "natural gas produced from any new, onshore prodution well." §§ 277.203(a)(2)(iii) and 277.205(b). For purposes of this requirement, the 45-day period would start to run for all gas produced from that well on the date that the well is first determined to be a new, onshore production well. This would be consistent with the Commission's theory that gas from any proration unit in the well is covered by the initial determination that a well is a new, onshore production well, subject only to the grant of a well permit for each proration unit and the well being the first completed in the unit.

[11] Consistent with its efforts to reduce regulatory burden, the Commission also proposes to allow this rule, if promulgated, to cover section 103 determinations made prior to the final order establishing this new procedure.

[12] If the Commission determines that it can place total reliance on the well completion permitting process to satisfy the section 103(c)(3) proration unit restrictions, the Commission would consider eliminating the special rule in § 271.305. Under this special rule, gas produced by a well within an existing proration unit that would otherwise be excluded because the well is the second well in that proration unit can nonetheless qualify under section 103 if the jurisdictional agency submits a notice of determination and makes an explicit finding that the new well "is necessary to effectively and efficiently drain a portion of the reservoir covered by the proration unit which cannot be effectively and efficiently drained by any existing well within the proration unit." 18 CFR § 271.305(b). If the Commission were to rely on the well completion permitting process to ensure that second wells in a proration unit are necessary to effectively and efficiently drain the unit, the special rule in § 271.305 would be unnecessary. The Commission specifically requests comments on this issue.

[13] Under certain limited circumstances (seasonally affected wells, enhanced recovery techniques, and temporary pressure buildup), a well which exceeds the 60 Mcf limit may continue to qualify as a stripper well. *See* 18 CFR 271.804(d), 271.804(e) and 271.805(e) (1982).

[14] The operator or purchaser of the gas produced from such well must give a written notice of disqualification to the jurisdictional agency, the Commission, and the operator or purchaser as appropriate. 18 CFR 271.805(a) (1982).

written and interpreted, thus impose on operators of such wells the significant burden of filing a new application each time they seek to requalify their wells.

To eliminate multiple filings to requalify the same well, the Commission proposes to amend its regulations to provide that production of natural gas from an otherwise qualified stripper well in excess of the 60 Mcf limit disqualifies the seller of such natural gas from collecting up to the section 108 price, but does not affect the original determination that the well is a stripper well.[15] Under the proposal, when the well subsequently produces within the 60 Mcf of nonassociated natural gas limit for a 90-day production period, the seller may resume collecting up to the section 108 price without filing a new application.[16] During the period of disqualification, the seller would be permitted to collect the otherwise applicable maximum lawful price.

In addition to proposing the elimination of the reapplication requirement, the Commission also proposes to amend certain other reporting requirements for section 108 stripper wells. Under § 271.805(a), an operator or purchaser is required to notify the appropriate jurisdictional agency when a stripper well's production exceeds the 60 Mcf limit. Since the Commission proposes to eliminate the filing of well category determination applications with the jurisdictional agency to requalify stripper wells, the jurisdictional agency would not need to receive notice of the disqualification of a well due to increased production. The Commission, therefore, proposes eliminating this requirement.

Additionally, the Commission proposes amending § 271.805(b), by requiring that a copy of a petition filed under § 271.806 with the jurisdictional agency need be served only on the purchaser, and not the Commission. Such petitions are either motions contesting a notice by a purchaser that a stripper well is disqualified, or petitions for a determination that the increased production is the result of an application of a recognized enhanced recovery technique, the result of seasonal fluctuation, or temporary pressure build-up. The Commission believes that it is not necessary to forward a copy to the Commission because a copy of the petition is part of the determination sent later to the Commission by the jurisdictional agency.

These proposed amendments would be prospective in operation, and would apply only to stripper wells disqualified under section 108 by exceeding the 60 Mcf limit after a final rule in this docket takes effect.[17]

4. *Natural Gas Produced from Wells below 15,000 Feet.* The price of natural gas produced from completion locations below 15,000 feet (deep gas) in wells whose surface drilling began on or after February 19, 1977, has been deregulated under section 121(b) of the NGPA. Section 107(c) of the NGPA requires, however, that a well category determination be made to ensure that the gas is eligible deep gas.

The Commission currently requires an application to be filed for gas produced from each completion location below 15,000 feet. Thus, under current practice, a new application is required for gas produced from a completion location that is deeper than the completion location that already has been the subject of a determination that gas produced therefrom is deep gas. For example, if gas produced from a completion location at 15,500 feet already has been determined to be deep gas, the Commission's current practice requires that a new application be filed for gas produced from the same well at a completion location at 16,500 feet.

The Commission considers the second application in the above example unnecessary because gas produced from a completion location deeper than a completion location already determined to be deep gas must by definition also be deep gas. Thus, the Commission proposes that any application for a determination that gas is deep gas will cover gas produced from the completion location named in the application and gas produced from any deeper completion location.

The Commission will still require a new application for gas produced from a completion location that is shallower than a completion location which has already received an affirmative section 107(c)(1) determination. This application is necessary to ensure that the new completion location is still deeper than 15,000 feet.

B. Reduction in Filing Requirements

In addition to eliminating the applications discussed above, the Commission proposes reducing the information to be filed with some applications by eliminating the filing of various types of geographic information and certified copies of certain records.

1. *New Natural Gas Under Section 102(c)(1)(C)(ii).* Natural gas qualifies as "new natural gas" under section 102 if the well producing the gas is 1000 feet below the deepest completion location of each marker well[18] within 2.5 miles of the new well. To establish that this geographic test is met, the Commission's regulations require that applicants file, among other things, the following:

(1) A directional drilling survey, if required by the jurisdictional agency;

(2) A location plat;

(3) A list identifying the location and depth of the subject well relative to all marker wells within 2.5 miles of the subject well;

(4) Oath statements by the applicant that the 1000 foot geographic test is met.

Based on its experience in implementing section 102, the Commission believes that the burden imposed by these requirements can be reduced without compromising its obligations under the NGPA. Accordingly, the Commission proposes eliminating the requirements that location plats and directional drilling surveys be filed.[19]

In order to substantiate that the well qualifies under the 1,000 foot deeper test, the Commission also is proposing that an applicant identify only the depth of the *deepest* completion location of any marker well, rather than the depth of *all* marker wells, located within 2.5 miles of the subject well. The Commission believes that the applicant oath statements attesting that the

[15] The original determination is based on the minimum filing requirements in § 274.206 of the Commission's regulations. This proposal would not amend § 274.206 nor would it reduce any filing requirements for the original determination. These requirements form the evidentiary basis which supports the continuing regulatory qualification of the well.

[16] In § 271.803(b) of its regulations implementing section 108 of the NGPA, the Commission defined "nonassociated natural gas" during the 90-day qualifying period by a reference to a sliding scale ratio of natural gas production to crude oil production. For example, if three barrels of crude oil per day are being produced, then less than 30 Mcf of natural gas per day must be produced in order for the well to qualify as a stripper well. The Commission would continue its current practice of requiring that the sliding scale ratio of crude oil to natural gas production be met in order to requalify to collect the section 108 price.

[17] The Commission is aware, however, that certain applicants have already made requests for waiver of the existing stripper well regulations. The Commission plans to address cases involving sales made prior to the Commission's adoption of any proposals described here on a case-by-case basis, while implementing the proposed amendment on a prospective basis only.

[18] NGPA section 2(5)(A) defines marker well as any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

[19] Under the Commission's regulations, a jurisdictional agency may require additional information beyond that required by the Commission. 18 CFR 274.201(c)(1982). These proposals are intended to affect only that information filed for the Commission's purposes, and not to alter a jurisdictional agency's authority to require additional information.

geograhic requirement has been met and the substituted 1,000 foot deeper requirement are sufficient to ensure compliance with the geographic requirements of the NGPA.

2. *New Onshore Reservoir Under Section 102(c)(1)(C).* Under section 102(c)(1)(C) of the NGPA, natural gas produced from a reservoir which did not produce natural gas in commercial quantities before April 20, 1977,[20] qualifies as "new natural gas" under section 102 of the NGPA. To establish that the gas is produced from such a reservoir, § 274.202(d)(1)(ii) of the Commission's regulations requires that an applicant provide "[g]eological information sufficient to support a determination that the reservoir is a new onshore reservoir."

In many instances, the information submitted by applicants duplicates information previously filed with the jurisdictional agency for the purposes of establishing that this reservoir is a new reservoir or new field for state regulatory purposes. In lieu of submitting geological information which has already been submitted to the jurisdictional agency, the Commission proposes allowing an applicant to file a copy of any state order designating a new reservoir or granting new field status to a reservoir in which a well is completed and for which the determination is sought. The Commission believes that where the state order exists, the Commission can rely on this order for the purposes of reviewing determinations made under section 102(c)(1)(C) to see if they are supported by substantial evidence in the record.[21]

3. *Tight Formation Gas Under Section 107(c)(5).* Under section 107(c)(5) of the NGPA, the Commission has designated natural gas produced from geological formations known as "tight formations" as high-cost gas.[22] Tight formation gas is eligible for a special incentive price if it meets certain qualifications. One of these qualifications is established by the present requirement that an applicant file a map showing that the well for which the well category determination is sought is located within a designated tight formation. 18 CFR 274.205(e)(1)(ii) and 274.205(e)(2)(iii) (1982).

The Commission has on file the geographic descriptions of all designated tight formations and can determine from this information whether the well is located within a designated tight formation. Accordingly, the Commission proposes eliminating the map filing requirement for both tight formation gas and recompletion tight formation gas.

4. *Certified Copies.* Many of the Commission's regulations implementing the NGPA require an applicant to file "certified copies of records relied on by the applicant," if the jurisdictional agency so requires. The Commission believes that is not necessary for its purposes that these records be filed as part of this Commission's regulations. Accordingly, the Commission proposes to delete this requirement from the various sections in which it is contained.[23] If a jurisdictional agency determines that such information is necessary, it may require the filing of that information pursuant to § 274.201(c) of the Commission's regulations.

V. Certification of No Significant Impact

The Regulatory flexibility Act (RFA)[24] requires certain statements, descriptions, and analyses of proposed rules that will have "a significant economic impact on a substantial number of small entities."[25] The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities".[26]

There are approximately 10,000 natural gas producers in the United States, many of which would be classified as small entities under the appropriate RFA definition.[27] This proposed rule might affect most of these entities by eliminating filing requirements that are unnecessary. This proposed rule does not impose any additional regulatory burden. Thus, while this rule would have a beneficial impact on small entities, the Commission believes that this impact will not be "significant." Accordingly, the Commission certifies that this rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities."

VI. Comment Procedures

The Commission invites interested persons to submit written comments, data, views and other information concerning the matter set out in this notice. An original and 14 copies of such comments should be filed with the Commission by January 7, 1983. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should reference Docket No. RM83–3–000.

All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426, during regular business hours.

In addition, an opportunity for a public hearing to receive oral comments will be afforded, if requested, in accordance with section 502(b) of the NGPA. Any person requesting an opportunity to appear to give oral comments must file with the Secretary a request to do so by December 14, 1982.

(Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. IV 1980); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. IV 1980))

List of Subjects

18 CFR Part 271

Natural gas, Incentive prices.

18 CFR Part 274

Natural gas, Incentive prices.

In consideration of the foregoing, the Commission proposes to amend parts 271 and 274, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—[AMENDED]

1. Section 271.303 is revised to read as follows:

§ 271.303 Definition of new, onshore production well.

(a) For purposes of this subpart, the term "new, onshore production well" means a well which a jurisdictional agency has determined, in accordance with Parts 274 and 275, to be a new,

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[20] Qualification under section 102(c)(1)(C) is subject to the behind-the pipe and withheld gas exclusions. Section 102(c)(1)(C)(ii) and (iii), 15 U.S.C. 3312(c)(1)(C)(ii) and (iii) (Supp. IV 1980).

[21] The Commission has already approved alternative filing requirements for applications filed with the Railroad Commission of Texas which are the same as the proposed requirements for new natural gas and new onshore reservoirs. 18 CFR 274.208(d)(1982). If the proposed rule were adopted, these requirements would be unnecessary and would be deleted.

[22] Order No. 99, Docket No. RM79-76, issued August 15, 1980, 45 FR 56,034 (August 21, 1980).

[23] This requirement appears in the following sections of the Commission's regulations: §274.202(c)(1)(vii); §274.202(c)(2)(viii); §274.202(d)(1)(vii); §274.203(g); §274.204(e); §274.205(a)(6); §274.205(b)(6); §274.205(c)(6); §274.205(d)(6); §274.205(f)(10); §274.206(a)(11); §274.206(b)(6); §274.206(c)(7); §274.206(d)(6); and §274.206(e)(8).

[24] 5 U.S.C. 601 through 612 (Supp. IV 1980).

[25] *Id.* at 603(a).

[26] *Id.* at 605(b).

[27] *Id.* at Section 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (Supp. IV 1980). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

onshore production well (as defined in section 103(c) of the NGPA).

(b) A determination that gas is produced from a well that qualifies as a "new, onshore production well" applies to:

(1) Any natural gas produced from that well from any completion location for which the applicable state or federal agency grants a well completion permit, provided the completion location is the first completion location in the proration unit; or

(2) Any natural gas for which a finding has been made under § 271.305 of this subpart.

2. Section 271.805 is amended by removing paragraph (c), redesignating and revising paragraph (a) as (d), paragraph (b) as (e), paragraph (d) as (f), and paragraph (e) as (g) and adding new paragraphs (a), (b), and (c), and revising new paragraph (f) all to read as follows:

§ 271.805 Continuing qualification.

(a) *General Rule for Qualification.* The maximum lawful price specified in § 271.802 shall apply to gas produced from:

(1) A well for which an application has been filed under this subpart or a determination has been made under this subpart which produces nonassociated natural gas (as defined by § 271.803(b) of this subpart) at a rate not exceeding an average of 60 Mcf per production day for any 90-day production period; or

(2) A well which has been designated a seasonally affected well producing nonassociated natural gas (as defined by § 271.803(b) of this subpart) at a rate not exceeding an average of 60 Mcf per production day for any 12-month period.

(b) *General Rule for Disqualification.* The maximum lawful price specified in § 271.802 shall not apply to a well otherwise qualified under paragraph (a) of this section which produces more than 60 Mcf of natural gas per production day for the applicable 90-day or 12-month production period without regard to the production of crude oil. The ceiling price for gas produced from such a disqualified well shall be the otherwise applicable maximum lawful price.

(c) *General Rule for Requalification.* The maximum lawful price specified in § 271.802 shall apply to natural gas produced from a well which was qualified under paragraph (a)(1) of this section but was disqualified under paragraph (b) of this section provided the production from that well decreases to a level not exceeding an average of 60 Mcf of nonassociated natural gas (as defined by § 271.803(b) of this subpart) per production day for a new 90-day production period. An application to a jurisdictional agency is not required to requalify under this paragraph. Natural gas produced from a well which was qualified under paragraph (a)(2) of this section but was disqualified under paragraph (b) of this section can only be requalified as a seasonally affected well by a new jurisdictional agency determination that the natural gas qualifies under § 271.804(d) of this subpart.

(d) *Notice of disqualification.* (1) Unless exempt under § 271.804(d)(3), the operator and any purchaser of natural gas shall give written notice if a well has been disqualified under paragraph (b) of this section.

(2) Notice required under paragraph (d)(1) of this section shall be given within 90 days after the last day of the 90-day or the 12-month production period in which the increased production of natural gas occurred.

(3) Such notice shall be served on the Commission and on the operator and any purchaser, as appropriate.

(e) *Petition under § 271.806.* (1) The operator may file with the jurisdictional agency:

(i) A motion contesting a notice filed by a purchaser under paragraph (d) of this section;

(ii) A petition for a determination under § 271.806 that the increased production of natural gas is:

(A) The result of the application of an enhanced recovery technique;

(B) If the well has not been designated as seasonally affected, the result of seasonal fluctuations; or

(C) The result of pressure buildup which occurred when the well was temporarily shut-in.

(2) A petition or motion filed under paragraph (e)(1) of this section may be filed at any time after notice is given under paragraph (d) of this section. A copy of the petition or motion and of the notice required under paragraph (d)(1) of this section shall be provided to the purchaser.

(f) *Collection subject to refund.* An operator who files a petition or motion under paragraph (e) of this section may collect, subject to refund, the maximum lawful price set forth in § 271.802:

(1) From the last day of the 90-day or the 12-month production period in which production from the well exceeded an average of 60 Mcf per production day, if such petition or motion is filed within 150 days of the last day of such 90-day or 12-month period or

(2) From the date such petition or motion is filed in all other cases.

(g) *Filing rquirements for increased production based on enhanced recovery techniques.*

* * * * *

PART 274—[AMENDED]

(3) Section 274.104 is amended by revising paragraph (a) introductory text and by adding a new paragraph (c) to read as follows:

§ 274.104 Notice to the Commission.

(a) *Affirmative determinations.* Except as provided in paragraph (c) of this section, within 15 days after making a determination that natural gas qualifies under this part for a maximum lawful price, the jurisdictional agency shall give written notice of such determination to the Commission. Unless alternative notice requirements under § 274.207 have been approved, such notice shall include the following:

* * * * *

(c) *Affirmative determinations under section 102(c)(1)(A).* Notification to the Commission by the U.S. Department of Interior Minerals Management Service of OCS leases issued after April 20, 1977, will constitute a determination that natural gas produced from such lease qualifies as new natural gas under section 102(c)(1)(A). such notification shall be given within 60 days after the grant of a new OCS lease and shall include the lease number, the area and block number, and the date on which the lease was issued by the Secretary of the Interior. Such notification will be treated as a notice of determination under Part 275.

4. In § 274.202, paragraph (a)(1) is removed; paragraphs (a)(2) and (a)(3) are redesignated as (a)(1) and (a)(2); paragraph (b) is removed; paragraphs (c) through (e) are redesignated as (b) through (d); and a new paragraph (e) is added to read as follows:

§ 274.202 New natural gas.

* * * * *

(e) *Determinations under section 102(c)(1)(A).* Once notification to the Commission by the U.S. Department of Interior Minerals Management Service is made in accordance with § 274.104(c) of this Part, no further filings are required to qualify natural gas subject to section 102(c)(1)(A).

§ 274.202 [Amended]

5. Section 274.202 is further amended by making the following redesignations in paragraph (a):

(a) In redesignated paragraph (a)(1), the reference to paragraph (b) is redesignated as paragraph (c); and

(B) In redesignated paragraph (a)(2), the reference to paragraph (c) is redesignated as paragraph (d).

6. Section 274.202 is further amended by making the following removals, redesignations, and addition in redesignated paragraph (b):

(a) Redesignated paragraph (b)(1)(vii) is removed;

(b) Paragraph (b)(2)(iii) through (v) and (viii) are removed; and

(c) Paragraphs (b)(2)(vi) and (vii) are redesignated as (b)(2)(iv) and (v) respectively.

(d) New paragraph (b)(2)(iii) is added to read as follows:

§ 274.202 New natural gas.

* * * * *

(b) * * *

(2) * * *

(iii) Identification of the deepest completion location of the marker well with the deepest completion location of all marker wells located within 2.5 miles of the well for which the determination is sought;

* * * * *

7. Section 274.202 is further amended by making the following addition, removal, and redesignation to redesignated paragraph (c):

(a) paragraph (c)(1)(iv) and (vii) are removed;

(b) paragraph (c)(1)(v) and (vi) are redesignated as (c)(1)(iv) and (v) respectively; and

(c) paragraph (c)(1)(ii) is revised to read as follows:

§ 274.202 New natural gas.

* * * * *

(c) * * *

(1) * * *

* * * * *

(ii)(A) A copy of the state order issued on or after April 20, 1977, designating new field or reservoir status to the subject reservoir, or

(B) If a state order is not available, such geological information shall be submitted which includes to the extent reasonably available to the applicant at the time the application is filed:

(*1*) Well logs;

(*2*) Bottom hole or surface pressure surveys;

(*3*) Well potential tests;

(*4*) Formation structure maps;

(*5*) Subsurface cross-section charts; and

(*6*) Gas analyses.

If any of the information specified in paragraph (c)(1)(ii)(B)(*1*) through (*6*) has already been filed in a previous application for determination with the same jurisdictional agency, and such application and determination of eligibility for such application are on file with the Commission, the applicant may submit, in lieu of such information, a statement identifying such information and the application by jurisdictional agency docket number, FERC docket or control number, and the API well number.

8. Section 274.202 is further amended by making the following redesignations in redesignated paragraph (c):

(a) In paragraph (c)(1)(iv), the reference to § 274.202(e) is redesignated as § 274.202(d);

(b) In paragraph (c)(1)(v), the reference to paragraph (e)(2) is redesignated as (d)(2);

(c) In paragraph (c)(2), the reference to paragraph (e) is redesignated as (d);

(d) In paragraph (c)(2)(ii)(A), the reference to paragraph (d)(2)(i) is redesignated as (c)(2)(i);

(e) In paragraph (c)(2)(ii)(B), the reference to paragraph (d)(2)(ii)(A) is redesignated as (c)(2)(ii)(A);

(f) In paragraph (c)(2)(ii)(C), the reference to paragraph (d)(2)(ii)(B) is redesignated as (c)(2)(ii)(B) and the reference to paragraph (d)(2)(ii)(A) is redesignated as (c)(2)(ii)(A);

(g) In paragraph (c)(2)(ii)(D), the reference to (d)(2)(ii)(C) is redesignated as (c)(2)(ii)(C);

(h) In paragraph (c)(2)(ii)(D)(*2*), the reference to (d)(2)(ii)(A) is redesignated as (c)(2)(ii)(A); and

(i) In paragraph (c)(2)(iii)(B), the reference to (d)(2)(iii)(A) is redesignated as (c)(2)(iii)(A).

§ 274.203 [Amended]

9. In section 274.203, paragraph (g) is removed.

§ 274.204 [Amended]

10. In section 274.204, paragraph (e) is removed and paragraphs (f) and (g) are redesiganted as (e) and (f) respectively.

§ 274.205 [Amended]

11. Section 274.205 is amended by removing paragraph (a)(6); by removing paragraphs (b)(6), (c)(6), (d)(6), and (f)(10); by revising paragraph (e) to remove (e)(1)(ii); by redesignating (e)(1)(iii) and (iv) as (e)(1)(ii) and (iii) respectively; and by removing (e)(2)(iii) and redesignating (e)(2)(iv) and (v) as (e)(2)(iii) and (iv) respectively.

12. Section 274.205 is further amended by revising paragraph (a) to read as follows:

§ 274.205 High-Cost Natural Gas.

(a) *Deep, high-cost natural gas.* (1) A person seeking a determination for purposes of Part 272 that natural gas is deep, high-cost natural gas shall file an application with the jurisdictional agency. An application filed under this paragraph shall cover natural gas produced from the completion location identified in the application and any deeper location that may be completed after the date of the application.

(2) An application required by paragraph (a)(1) of this section shall contain the following items:

(i) FERC Form No. 121;

(ii) All well completion reports for the well for which a determination is sought;

(iii) The log heading together with the relevant portion of the well log or well servicing company reports or such other information which will corroborate the depth of the completion location reported in the well completion report;

(iv) Directional drilling surveys, if available; and

(v) A statement by the applicant, under oath, that the surface drilling of the well for which the applicant seeks a determination began on or after February 19, 1977, that the well completion location is located at a true vertical depth of more than 15,000 feet, and that the applicant has no knowledge of any information not described in the application which is inconsistent with his conclusions.

* * * * *

§ 274.206 [Amended]

13. In section 274.206, paragraphs (a)(11), (b)(6), (c)(7), (d)(6), and (e)(8) are removed.

§ 274.208 [Amended]

14. Section 274.208 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

[FR Doc. 82-32634 Filed 11-29-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 77P-0071]

Revised Proposal To Amend Standard of Identity for Skim Milk Cheese for Manufacturing and To Establish a New Standard of Identity for Skim Milk Cheese

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing a revised proposal to amend the standard of identity for skim milk cheese for manufacturing and to establish a

standard of identity for skim milk cheese. The initial proposal would have amended only the standard of identity for skim milk cheese for manufacturing to provide for skim milk cheese that could be sold directly to consumers and also utilized as a cheese ingredient in pasteurized process cheese products. This revised proposal incorporates comments received in response to the initial proposal.

DATES: Comments by January 31, 1983. The agency proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements which is announced by notice in the **Federal Register** and which is not sooner than 1 year following publication of any final rule based upon this proposal. See Supplementary Information for full discussion of proposed effective date.

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

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF–215), Food and Drug Administration, 200 C St., SW., Washington, DC 20204; 202–245–1155.

SUPPLEMENTARY INFORMATION: A proposal was published in the **Federal Register** of October 4, 1977 (42 FR 53979), to amend the standard of identity for skim milk cheese for manufacturing in § 133.189 (21 CFR 133.189) to: (1) Change the name of the food to "skim milk cheese"; (2) increase the maximum permissible moisture level from 50 percent to 60 percent; (3) eliminate the necessity of applying to the surface of the cheese a blue paraffin coating; (4) permit the use of modern cheddar type cheese curd handling techniques; and (5) consistent with other more recent standards, recognize skim milk products as acceptable foods and ingredients in other foods. The proposal was based on a petition filed by Kraft Foods Division, 135 South LaSalle St., Rm. 2360, Chicago, IL 60603. Grounds given in support of the proposal were (1) that the proposed changes would update the standard and make the food more useful as a cheese ingredient because "skim milk cheese for manufacturing" is currently seldom used and (2) that the use of skim milk cheese as a cheese ingredient in lower fat pasteurized process cheese products would be necessary for the production of the high quality, but lower fat, cheese products desired by consumers. Comments were to be submitted by December 5, 1977. Based on requests from industry, a notice reopening the comment period was published in the **Federal Register** of September 19, 1978 (43 FR 42126). Based on further requests from industry, a second notice extending the comment period was published in the **Federal Register** of December 19, 1978 (43 FR 59095), with comments to be submitted by March 19, 1979.

Fourteen letters, each containing one or more comments, were received from industry and consumers. Seven of these letters supported the proposal. The remaining letters offered suggested changes.

After considering the comments received, FDA has determined that it would be in the interest of consumers to publish a revised proposal (1) to amend the standard of identity for skim milk cheese for manufacturing and (2) to establish a standard of identity for skim milk cheese. A summary of the comments to the initial proposal and FDA's conclusions are as follows:

1. Four comments stated that salt should be provided for in the standard as a mandatory ingredient because it aids in the control of microbial organisms in the attainment of the expected physical attributes of the skim milk cheese.

FDA agrees. The provision for salt as a mandatory ingredient, which is provided for in the current standard of identity for skim milk cheese for manufacturing (21 CFR 133.189), was inadvertently omitted from the initial proposal. Therefore, FDA is revising § 133.189(b) of the October 4, 1977 proposal to include salting of the curd as a ncessary step in its preparation as set forth below in proposed § 133.192(b). While the declaration of salt is not mandatory, the agency recommends voluntary declaration of its presence.

2. Two comments opposed the proposed amendment of the standard of identity for skim milk cheese for manufacturing because the proposed product, skim milk cheese, did not represent a product currently produced commercially and had not been proven as a substitute for the skim milk cheese for manufacturing used in the production of process cheese products.

The intent of the October 4, 1977 proposal to amend the standard of identity for skim milk cheese for manufacturing was to continue to provide for the use of skim milk cheese for manufacturing as a cheese ingredient in process cheese products, and at the same time, for protection of the public health, to require that skim milk cheese intended for direct consumption as a food, be made from pasteurized dairy ingredients. Therefore, in clarification, FDA proposes that the standard of identity for skim milk cheese for manufacturing (21 CFR 133.189) should be retained as revised below and that a new standard of identity for skim milk cheese, as set forth below, should be established.

3. Four comments requested that the fifth sentence in paragraph (b) of the October 4, 1977 proposed revision of the standard of identity for skim milk cheese for manufacturing, which begins "Proteins from whey may be incorporated," be changed to read "Proteins from the whey may be incorporated" as in the current standard of identity for skim milk cheese for manufacturing. The change would limit the whey protein (albumin) which may be added to the batch of skim milk cheese for manufacturing to the whey protein which is derived from the whey drained from the vat lot of curd from which the cheese was made.

Another comment stated that the amount of protein should be limited to the amount lost in the whey separated from the curd during the manufacturing process.

FDA does not agree that it would be either practical or reasonable to limit the source of whey protein in the manner requested by the first four comments. However, FDA concludes that it is reasonable to limit the amount of whey protein which may be added to the amount that was lost in the whey drained from the curd. This conclusion is supported by the findings of fact in the final order published in the **Federal Register** of August 24, 1950 (15 FR 5656), which state in finding 109, with reference to the procedure used for making skim milk cheese for manufacturing, that "From evidence on other cheeses it appears that there will be some advantage in the incorporation in this cheese of the proteins usually lost in the whey." The proposed standard of identity, as set forth below, therefore, provides for the addition of proteins from whey in an amount equal to that lost in the whey drained from the curd.

4. Two comments requested the use of safe and suitable antimycotics on the surface of bulk cheese during curing and/or on the surface of consumer-sized cuts and slices of skim milk cheese.

No data or information were provided in support of the request to add antimycotics to the bulk cheese during curing. Without any factual basis upon which to grant the request, the agency has no alternative other than to deny it. However, the use of antimycotics on the surface of consumer-sized cuts and slices of skim milk cheese is consistent with similar provisions in many other cheese standards of identity. Accordingly the agency provides for this

use of antimycotics in § 133.192(f) of the proposal.

The proposed standard, as published in the **Federal Register** of October 4, 1977, defined skim milk cheese as containing less than 0.5 percent milkfat. Based on information published in the literature (Refs. 1–4), as well as information contained in the comments received regarding the initial proposal, FDA has determined that a skim milk cheese acceptable for consumer use cannot be made using skim milk containing 0.5 percent or less milkfat. Rather, the agency believes a factual basis exists to support the use of milkfat levels between 0.7 percent and 1.0 percent in the dairy ingredients used (with 1.0 percent being needed if a 60 percent maximum moisture skim milk cheese is desired) in making a skim milk cheese that will be acceptable to consumers. The resulting "skim milk cheese" would contain a maximum of 18 percent milkfat on a solid basis. The proposed standard of identity for skim milk cheese, as set forth below, therefore, requires that the solids of the cheese contain not more than 18 percent milkfat which is equivalent to a maximum milkfat level of 7.2 percent in the finished cheese. This provides for a higher fat "skim milk cheese" acceptable for direct human consumption and would continue to provide for the lower fat "skim milk cheese for manufacturing" presently provided for by 21 CFR 133.189.

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. Hargrove, R. E., McDonough, F. E., and Tittsler, R. P., "New Type of Ripened Low-Fat Cheese," *Journal of Dairy Science*, 49(7):796–799, 1966.

2. Hargrove, R. E., McDonough, F. E., and Tittsler, R. P., "Factors Affecting Characteristics, Composition, and Quality of Skimmilk Cheese," *Journal of Dairy Science*, 50(2):160–166, 1966.

3. Webb, Byron H., "A New Low-Fat Cheese," *Yearbook of Agriculture*, 289–293, 1968.

4. Walter, H. E., Sadler, A. M., and Mattingly, W. A., "Semisoft Skimmilk Cheese. Pilot Plant Procedure," *Journal of Dairy Science*, 52(7):1133–1136, 1969.

The agency periodically announces by notice in the **Federal Register** uniform effective dates for compliance with food labeling requirements. (See, for example, the **Federal Register** of August 13, 1982 (47 FR 35185). The agency proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements which is announced by notice in the **Federal Register** and which is not sooner than 1 year following publication of any final rule based upon this proposal. Affected products initially introduced or initially delivered for introduction into interstate commerce on or after the effective date would be required to comply with any final rule other than any provisions that are stayed by the filing of proper objections.

The agency has determined pursuant to 21 CFR 25.24(b)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601), FDA has reviewed the proposed rule to amend the standard of identity for skim milk cheese for manufacturing and to establish a new standard of identity for skim milk cheese for direct consumption by consumers to determine its impact on small entities including small businesses. FDA has determined that because the effect of these standards of identity is to permit additional flexibility in the manufacturing of these foods to both large and small entities, the proposed actions would not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies in accordance with section 605(b) of that act that no significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 133

Cheese, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 133 be amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. By revising § 133.189 to read as follows:

§ 133.189 Skim milk cheese for manufacturing.

Skim milk cheese for manufacturing conforms to the definition and standard of identity prescribed for skim milk cheese by § 133.192, except that:

(a) Proteins from whey may be added to the curd in an amount equal to that lost in the whey drained from the curd.

(b) The dairy ingredients used may be unpasteurized.

(c) The provisions of § 133.192(f) do not apply.

2. By adding a new § 133.192 to read as follows:

§ 133.192 Skim milk cheese.

(a) Skim milk cheese is the food prepared from one or more of the dairy ingredients set forth in paragraph (c) of this section and by the procedure set forth in paragraph (b) of this section, or by any other procedure that produces a finished cheese having the same physical and chemical properties as the cheese produced when the procedure set forth in paragraph (b) of this section is used. It contains not more than 60 percent of moisture, and its solids contain not more than 18 percent of milkfat, as determined by the methods prescribed in § 133.113(c).

(b) The dairy ingredients, which shall be pasteurized, and which may be warmed, are subjected to the action of harmless lactic-acid-producing bacteria present in such dairy ingredients or added thereto. Safe and suitable color additives may be used. Rennet, or other safe and suitable milk-clotting enzymes that produce equivalent curd formation, or both, with or without purified calcium chloride in a quantity not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients used, are added to set the dairy ingredients to a semisolid mass. The curd is formed, salted, handled, and drained as in the preparation of any American cheese (i.e., either cheddar, colby, washed curd, or granular cheese). Safe and suitable enzymes capable of aiding in the curing or development of flavor of the cheese may be added during the procedure.

(c) The dairy ingredients which may be used are: (1) milk, partly skimmed milk, skim milk, and cream and/or (2) concentrated or dry milk, partly skimmed milk or skim milk, or a mixture of any two or more of these mixed with water in a quantity not in excess of that sufficient to reconstitute the dairy ingredients used.

(d) For the purpose of this section milk and cream mean cow's milk and cream.

(e) The dairy ingredients used shall be deemed to have been pasteurized if held at a temperature of not less than 66.6° C (143° F) for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction.

(f) Skim milk cheese in the form of slices or cuts in consumer-sized packages may contain optional safe and suitable antimycotic agents.

(g) Label declaration of ingredients: Each of the ingredients used in the food shall be declared on the label as required by applicable sections of Part 101 of this chapter.

Interested persons may, on or before January 31,1983, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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: November 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32637 Filed 11-29-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 79N-0141]

Corn Sugar, Corn Syrup, and Invert Sugar (Syrup); Proposed Affirmation of GRAS Status as Direct Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that corn sugar, corn syrup, and invert sugar are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under a comprehensive safety review being conducted by the agency.

DATES: Comments by January 31, 1983; data on levels of lead and cadmium by March 30, 1983.

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

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of corn sugar, corn syrup, and invert sugar has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of corn sugar, corn syrup, and invert sugar.

Corn sugar, commonly called dextrose (glucose), is widely distributed throughout nature. It is produced by the complete hydrolysis of corn starch and may be crystallized as the monohydrate or the anhydrous form.

Corn syrup, generally referred to as glucose syrup, is a clarified, concentrated, aqueous solution of the products obtained by the partial hydrolysis of corn starch. Depending on the degree of hydrolysis of the starch, corn syrup may contain dextrose, maltose, or higher saccharides.

Invert sugar is a mixture of the monosaccharides glucose and fructose that results from the hydrolysis of the disaccharide sucrose. In nature, it is found primarily in honey. Invert sugar is marketed as a component of invert syrups, which also contain unhydrolyzed sucrose.

Corn sugar, corn syrup, and invert sugar are used in the flavoring, curing, and seasoning of sausage, ham, and poultry, as sanctioned by the United States Department of Agriculture (USDA) prior to the enactment of the Food Additives Amendment of 1958. In addition, FDA issued a 1960 opinion letter indicating that corn sugar and corn syrup are GRAS for direct human food use. Corn sugar, corn syrup, and invert sugar are also listed in § 182.90 (21 CFR 182.90) as GRAS substances that migrate from paper and paperboard products used in food packaging under regulations published in the **Federal Register** of June 17, 1961 (26 FR 5421). Corn sugar, corn syrup, and invert sugar are permitted as optional ingredients in many standardized foods. In particular, corn sugar is included under the food standard for dextrose anhydrous (21 CFR 168.10), and for dextrose monohydrate (21 CFR 168.11); corn syrup is included under the food standard for glucose sirup (21 CFR 168.120) and for dried glucose sirup (21 CFR 168.121).

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which corn sugar, corn syrup, and invert sugar were used and the levels of usage. NAS/NRC combined this manufacturing information with information on consumer consumption of foods to obtain an estimate of consumer exposure to corn sugar, corn syrup, and invert sugar. In 1970, 856 million pounds of corn sugar and 1.7 billion pounds of corn syrup were used in the United States. No information is available on the consumption of invert sugar.

Corn sugar, corn syrup, and invert sugar have been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavorial effects, (12) detection, and (13) processing. A total of 4,925 abstracts on corn syrup, corn syrup, and invert sugar was reviewed, and 39 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review reveals the following information, as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Maltose and higher saccharides present in corn syrup are not absorbed as such but are converted to glucose in the digestive process. Glucose and fructose are primarily absorbed by the mucosa of the small intestine although the sugars can also be absorbed from the colon. Glucose is absorbed primarily by an active transport mechanism and to a very limited extent by diffusion. Its absorption is relatively independent of the amount ingested. Although the mechanism of fructose absorption has not yet been completely elucidated it appears to occur by facilitated or carrier-mediated diffusion. Absorption of fructose into the blood was found to be 50 to 80 percent greater when ingested as sucrose by fasted men and women than when ingested as an equivalent amount of a mixture of glucose and frucose. Ockerman and Lundburg, studying human jejunum at operation, found that up to 70 percent of absorbed fructose was converted to glucose as measured in mesenteric venous blood, whereas White and Landau found a maximum conversion of 26 percent as measured by the incorporation of carbon from labeled fructose into glucose and glycogen.

The major pathways of glucose and fructose metabolism are well known. Glucose from the plasma is metabolized mainly by glycogen formation, anaerobic glycolysis via the Krebs cycle and conversion to fat. Absorbed fructose is largely converted to glucose in the liver and is metabolized as glucose. Glucose excretion in the urine occurs when rapid absorption provides an excessive

blood sugar concentration and in disease conditions such as diabetes mellitus. Fecal excretion occurs only in the case of malabsorption or sudden excessive ingestion.

Saunders and Isselbacher found that transport of the neutral amino acids alanine and glycine was inhibited in rat intestinal slices by the presence of fructose; in intestinal slices from rats fed fructose 2 to 3 months only alanine transport was inhibited. Comparable tests with glucose showed no effect.

Acute toxicity of dextrose in chicks has been determined by Kopfler and Wilkinson. Chicks 18 to 20 hours old and weighing from 40 to 45 g were given a 40 percent dextrose solution orally at a rate of 0.2 g of dextrose per hour (about 5 g per kg body weight per hour). When this excessive amount was administered the chicks survived about 13 hours. Mortality was attributed to critical tissue water losses caused by the high osmotic pressure of the solution. However, the same workers found that when a 8 percent dextrose solution was administered at the rate of 0.1 g of dextrose per 30 minutes, no deaths occurred. Only minor water depletion in the skin and skeletal muscle was observed.

In experiments on dextrose and fructose conducted by Orcel *et al.*, The LD_{50} dose for rats, administered intravenously, was found to be about 10 to 12 g per kg body weight. Lethal doses produced changes in the liver, particularly in the periportal hepatocytes. An LD_{50} dose of glucose increased serum transaminase activity, sulfobromophthalein retention and serum concentrations of aldolase, pyruvic acid and lactic acid. The no-effect level on transaminase activity was about 2.5 g per kg. An LD_{50} dose of fructose caused only moderate increase in transaminase activity and less pronounced sulfobromophthalein retention.

Studies carried out in the rabbit by Evans showed that the intravenous administration of up to 30 g of dextrose in rabbits weighing 2 kg failed to produce pathological effects.

The LD_{50} for maltodextrin administered orally was reported to be greater than 34.6 g per kg body weight in Charles River rats weighing 142 to 190 g. In an eye irritation test on non-sterilized maltodextrin, transient irritation was noted within one hour after instillation of 100 mg of test material in the eye of albino rabbits. Ocular tissues of all animals returned to normal within 24 to 72 hours.

Bachman *et al.* fed rats for 10 weeks on equicaloric diets containing 68 percent of either dextrose or fructose, equivalent to about 50 g per kg of body weight. Weight gain and feed efficiency were found to be the same for the two sugars. The average total glycogen and nitrogen content of the whole body was the same for the two groups. Total body fat content was significantly greater in the dextrose-fed rats. The fructose-treated rats exhibited increased hydration of body tissue and significant hypertrophy of the liver. No serious untoward effects were observed.

In another study, adult male rats were fed diets containing about 81 percent carbohydrate (about 40 g per kg of body weight) given as dextrose (anhydrous), sucrose, fructose and spray-dried liquid glucose for 26 weeks. The liquid glucose was identified as aqueous preparation of partially hydrolyzed starch with a dextrose equivalent of 42.5 and containing 76.5 percent carbohydrate. The content of dextrose, 18.7 percent; maltose, 13.9 percent; maltotriose, 11.2 percent; maltotetrose, 9.8 percent; and higher oligosaccharides, 44.4 percent, in the dry product indicate the product was prepared by acid hydrolysis of starch and was similar in composition to a 42.5 dextrose equivalent commercial glucose syrup. The animals receiving dextrose exhibited lower weight gain than did control rats receiving a standard laboratory diet containing 50 percent carbohydrate, mainly as starch. However, weight gain of the animals receiving the glucose syrup was not significantly different from that of the control animals. Compared to controls, the plasma cholesterol concentrations were significantly increased in rats by fructose and sucrose and, to a lesser degree, dextrose, but not by glucose syrup. Hearts, kidneys and livers were significantly heavier in animals receiving fructose, but organ weights of those given glucose syrup did not vary significantly from the controls. Sucrose also caused an increase in heart and liver weight, but dextrose caused an increase only in heart weight. Sucrose and fructose, but not dextrose or glucose syrup, increased liver dry weight and fat content. Liver protein content was significantly lower in animals on the test diets than those on the control diet; reductions were greatest for dextrose and sucrose as the carbohydrate source.

A study carried out by Röhm *et al.* showed that 20 percent dextrose solutions (about 70 g per kg of body weight) given exclusively for eight days to male Wistar rats, 217 g average weight, resulted in the formation of ulcers in the upper end of the stomach. After two days of dextrose feeding, single ulcers were present in this part of the stomach, increasing in size and number until the twelfth day. No ulcers were found in the small intestine. The ulcers healed rapidly when the rats were placed on a normal diet. The authors ascribed the development of the stomach ulcers to gastric juice that was not required for digestion and was therefore directed to the stomach wall. They pointed out that the upper part of the rat stomach is not similar to that found in humans and concluded that extrapolation to man should be made only with extreme caution.

Becker and Terrill carried out a 39-day feeding study with 9-week-old pigs maintained on semi-purified diets containing 50 percent of various carbohydrates, including dextrose (about 23 g per kg body weight). They found that dextrose produced satisfactory weight gain and feed efficiency.

Allen *et al.* fed mature baboons diets containing 74 percent available carbohydrates as sucrose for 26 weeks; these animals had higher total serum lipid and serum lipo-protein than did baboons maintained on a diet containing 74 percent available carbohydrate as liquid glucose (glucose syrup, dextrose equivalent 42.5) or animals fed a diet containing 47 percent of available carbohydrate as starch with 4.5 percent sucrose and 4.5 percent liquid glucose. The combined weight of abdominal and epididymal fat was significantly greater in the animals fed sucrose than in those fed the other diets.

Andrews and Cook fed glucose, sucrose or lactose to 30 premature infants weighing between 1,418 and 2,077 g. The infants were initially fed dextrose at 4 to 6 hours of age at 0.5 g per kg body weight. Subsequently, the carbohydrates were fed as a part of a soy isolate-based formula supplying 4.15 g of the carbohydrate per kg body weight per day and were gradually increased to 11.5 to 12.2 g per kg per day by the fifth day of life in eight equal feedings. The infants were maintained on these regimens until they reached a weight of five pounds. No statistically significant difference was established among the groups for percent weight loss, days to regain birth weight, weekly weight gains, or caloric efficiency; no adverse clinical findings were observed.

Studies by Uebelin showed that a single dose of 1 g (5.5 g per kg body weight) of dextrose given to 180 g rats by stomach tube caused an intense lymphopenia which was attributed to the secretion of ACTH. Treatment of weanling rats with 1 g of dextrose orally per day (14 g per kg body weight) for 14 days was found to produce atrophy of the thymus. Simultaneous administration of adenine suppressed both responses.

Peters and Strother and Strother *et al.* reported that high intakes of dextrose increased the duration of sleep induced by barbiturates and decreased the metabolism of barbiturates. In these experiments, mice were given 30 to 35 percent dextrose solution to drink (*ad lib*) for two days.

In order to examine the carcinogenicity of dextrose, Cappellato subjected 5- to 6-month-old rats to daily subcutaneous injections of 2 to 4 cc of a 25 percent dextrose solution (2.5 to 5 g per kg body weight). Control animals were injected with phsiological saline. Subcutaneous fusiform and polymorphous cellular sarcomata were observed in two of 55 animals. A third animal had a sarcoma in the abdominal cavity after 299 injections. Hueper carried out a study in mice and rats in which 0.5 to 2.0 ml, respectively, of 25 percent dextrose (about 5 g per kg) were injected two or three times a week for periods up to two years. No tumors were found at the site of injection and no indication of any untoward effects was observed. The data on carcinogenicity, therefore, are unconfirmed, and the relevance of subcutaneous injections to ingestion is questionable.

There are conflicting reports on the allergenicity of corn sugar and corn syrup. Ingestion of corn sugar and corn syrup and intravenous injections of corn sugar (dextrose) were reported by Randolph *et al.* to result in the production of allergic symptons in some individuals highly sensitive to corn. From "blindfold" ingestion studies of 25 patients with histories suggestive of corn allergy, Loveless reported a few cases of reaction to large feedings of the starches of corn, tapioca and arrowroot, but no case of susceptibility to corn syrup or corn sugar. Bernton also reported failure to

demonstrate sensitivity to corn syrup in ingestion test of an individual sensitive to corn meal and corn starch. In a review of the possible allergenicity of table syrups, Fisher and Carr concuded that there were no studies demonstrating that chemically pure glucose, sucrose or fructose can function as a haptene or allegen in individuals known to be sensitive to corn, sugar beets or sugar cane.

Yudkin has suggested that increased consumption of sucrose, as compared to starch and other complex carbohydrates, is an important factor in the etiology of coronary heart disease and diabetes. Since sucrose and starch differ chemically in their constituent monosaccharide units, much of the research on dietary sucrose has focused on the metabolic effects of fructose. High levels of fructose in the diets of animals and humans have been found to increase the plasma triglyceride concentration. Nikkila and Ojala compared triglyceride plasma levels in white, male rats, 250 to 300 g, on a commercial rat chow diet supplemented with glucose or fructose given as a 10 percent solution in the drinking water. Average daily intake of sugars was 8 g glucose and 6 g fructose (about 30 g and 20 g per kg body weight, respectively). After 2 and 4 weeks blood samples were collected from 2 hour fasted animals; glucose-supplemented diets caused a 60 percent increase in plasma triglyceride whereas fructose supplementation resulted in a 160 percent increase. In a similar experiment with both male and female rats, Bar-On and Stein found fructose-supplemented diets raised the serum triglyceride about 90 to 250 percent after 6 and 19 days on the supplemented diet. Serum triglycerides of rats on the glucose-supplemented diet were about equal to or lower than those of control animals. Fructose supplementation in drinking water of guinea pigs for 6 days had no effect on the serum triglyceride levels as compared to those receiving glucose. The high activity of glucose-6-phosphatase in the guinea pig intestine, resulting in the conversion of fructose to glucose before absorption, was proposed to explain this finding. Both rats and guinea pigs were fasted 16 hours before sacrifice.

Macdonald fed fat-free diets providing 7 g carbohydrate per kg body weight and 50 g calcium caseinate daily for 5 days to men and to pre- and postmenopausal women. Carbohydrate was starch, or 40 dextose:60 starch, or 40 fructose:60 starch, or 40 fructose:60 dextrose. Fasting serum lipid level determined on the last two days was increased most by the fructose-dextrose diet (61 and 120 percent in men and post-menopausal women, respectively) and least by the dextrose-starch diet (−19 and 27 percent, respectively). Serum lipids in premenopausal women were decreasd when fructose was included in the diet. In a recent review paper, Macdonald pointed out that the effect of dietary fructose on the fasting level of serum triglyceride is modified by the sex of the consumer, the amount and type of fat accompanying the fructose, the type of protein in the diet and the frequency of intake. Ahrens has pointed out the practice of determining serum lipid levels after and overnight fast tends to overestimate the effect of carbohydrates, since people on a high carbohydrate diet show a peak in serum triglyceride levels just before breakfast. In contrast, people on a liberal fat diet show a minimum serum triglyceride level at this time and a peak concentration some 4 hours later.

Carbohydrates, particularly sugars, have been implicated as a dietary cariogenic factor by epidemiological studies and animal feeding experiments. Worldwide, there appears to have been a positive correlation between caries incidence and the introduction of refined sugar and flour. But denal caries can and do occur in populations that have never used sugar or any other processed foodstuff. The most common factors associated with caries development in a study of over 80 patients with rampant dental caries were a history of frequent or excessive eating of sweets during and between meals, extensive bacterial plaque formation and low pH levels in plaques than in mucous membranes or saliva. Studies of eating habits of preschool and school children have indicated a correlation between the number of caries and the number of confections or quantity of sugar consumed between meals but not between dental caries experience and total sugar consumed. A 5-year study of 436 adult patients in Vipeholm Hospital under controlled dietary regimens showed that in evaluating the effect of sugar intake, not only the quantity of sugar consumed must be considered, but also the form in which it is served and whether it is consumed at or between meals. For example, it was found that patients placed on a diet with reduced sugar content showed an increase in caries activity when they received a small portion of the reduced amount of sugar between meals.

Cariogenic activities of sugar, starches and foods have been compared in experiments with rats and hamsters. Reports differ on the relative cariogenicity of sucrose and glucose. Studies on rats and hamsters showed that sucrose promoted greater caries activity than glucose. Other investigators have found that in rats the relative activity of these two sugars was not significantly different; depended on the rat strain, glucose being equally cariogenic in the rice rat but less in the Harvard caries-susceptible strain; or depended on both the microflora of the mouth and the rat strain. Cariogenic activity of fructose in animals appears to be similar to that of glucose. Fructose was as cariogenic as sucrose in humans when compared by the intra-oral cariogenicity test in which a slab of enamel is placed in an oral prosthetic device and worn within the mouth. Athough emphasis in most studies of cariogenicity has been on the simple sugars as food additives, there is evidence that complex carbohydrates and natural foods promote caries activity as components of animals diets. Sprague-Dawley rats fed powdered diets containing 60 percent pre-gelatinized potato starch developed over twice the number of carious areas at 30 days as did rats fed a comparable diet containing sucrose but this ratio was reduced to about one-half after 60 days on the diets. Stephan fed basal nonacriogenic and cariogenic diets, supplemented with 53 test foods and beverages, to a caries-susceptible strain of Osborne-Mendel rats. Supplements were offered *ad lib* between two daily feedings. Twenty-seven foods were significantly cariogenic on the noncariogenic basal diet and most of them, all containing fermentable sugars, significantly increased caries on the cariogenic diets. Included among these foods were figs, apples, bananas, grapes, raisins, dates, honey, and rye bread as well as cookies, mints, chocolate, dextrose and sucrose. Sucrose was the most cariogenic.

No studies on the mutagenicity or teratogenicity of dextrose have come to the attention of the Select Committee.[1]

Qualified scientists of the Select Committee have carefully evaluated all of the available safety information on corn sugar, corn syrup, and invert sugar. In the Select Committee's opinion:

Corn sugar, commonly referred to as dextrose, is crystalline α-D-glucose. Glucose is widely distributed in nature both in the free state and in various combined forms, including starch and sucrose. Glucose-yielding carbohydrates constitute one of the main sources of energy in the typical North American diet. Fructose, produced along with glucose in the hydrolysis of sucrose to invert sugar and by isomerization of dextrose, also is a significant dietary calorie source. The absorption and metabolism of these sugars are well established. Biological studies have shown that these substances are devoid of toxic effects at dosage levels well in excess of those that exist in the American diet and, accordingly, at levels that are orders of magnitude higher than those which might occur from the migration of these substances from paper and paperboard products.

Glucose syrup, also called corn syrup when made by the hydrolysis of corn starch, contains in addition to glucose, maltose, and higher saccharides in proportions that depend on the degree of hydrolysis of the starch. The higher conversion syrups may also contain small amounts of disaccharides formed by the recombination of glucose through glucosidic linkages not present in starch. Animal feeding studies have shown that glucose syrups are readily digested and metbolized and have given no evidence of toxic effects.

Fructose-dextrose mixtures have been observed to have hyperlipemic effects when fed at high levels in fat-free diets to adult males and postmenopausal women. There is no evidence, however, that the levels of invert sugar and high-fructose corn syrup in the average diet causes significant elevations in blood lipids and it is unlikely that the consumption of fructose has a role in coronary heart disease.

Although glucose and fructose as well as sucrose have been demonstrated to be cariogenic in animal experiments, epidemiological studies of dietary habits and controlled diets in institutional feeding

[1] "Evaluation of the Health Aspects of Corn Sugar (Dextrose), Corn Syrup, and Invert Sugar As Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976, pp. 9–15.

indicate that the cariogenicity of sucrose and other foods is affected by several factors and not necessarily by the total amount consumed. These factors include the frequency of eating, duration of exposure, and the form and physical properties of the food in which the sugar is ingested. Between-meal eating has been demonstrated to be significantly correlated with frequency and severity of caries in both children and adults. Thus, protection is facilitated by limitation of the frequency of consumption of sugar and sugared foods.

Consumption of dextrose and corn syrup has increased markedly in recent years and represented about 21 percent of the sweetener market in 1974 as compared to about 15 percent in 1970. A major part of the increase resulted from the introduction of high-fructose corn syrup produced by the enzymatic isomerization of dextrose in starch hydrolyzates. Level of fructose as the monosaccharide in the diet has increased accordingly but 1974 per capita daily consumption of this monosaccharide from all sources was only 6 g and no higher than in 1925–29, when apples provided a larger contribution than at present. High fructose corn syrups are predicted to increase in production and to replace sucrose and invert sugar in up to 30 percent of their applications by 1980–85, based largely on relative costs. There is no evidence that such replacement, *per se*, would have an adverse effect on public health.

However, the Select Committee has expressed concern in its report on sucrose that this sugar contributes to dental caries in the public at current consumption levels as used in the manner now practiced. It is questionable that replacement of sucrose by syrups and sugars derived from starch would greatly change the cariogenicity of foods containing these sugars. Informing the consumer of the sugar content of foods by appropriate labeling could lead to judicious use of sweetened food. Choices could be made easier with a greater selection of less sugared foods in the market place.[2]

The Select Committee concludes that evidence exists that simple sugars, including glucose and fructose (and, therefore, corn sugar (dextrose), corn syrup including high-fructose corn syrup, and invert sugars) are cariogenic. However, the Select Committee believes that, in the quantities that these simple sugars are now consumed in processed foods, their contribution to the formation of dental caries should be relatively small. If increased usage should occur, as seems likely, the contribution of these sugars to the occurrence of dental caries might become more important. Other than the contribution made to dental caries, the Select Committee finds that there is no evidence in the available information on corn sugar (dextrose), corn syrup, and invert sugar that demonstrates a hazard to the public when they are used at current levels and in the manner now practiced. However, the Select Committee states that it is unable to determine, without additional data, whether an increase in consumption—which would result if there is a significant increase in the total amount of corn sugar, corn syrup, invert sugar, and sucrose that is added to foods—would constitute a dietary hazard.[3]

On May 24, 1976 (see the **Federal Register** of April 7, 1976 (41 FR 14810)) the Select Committee held a public hearing on the findings in its tentative report regarding the safety of corn sugar, corn syrup, and invert sugar as food ingredients. Representatives of the Corn Refiners Association, Inc. made an oral presentation. (A request for oral presentation by the National Confectioners Association was withdrawn.) The corn industry representatives asserted that the conclusion reached by the Select Committee on the future status of these ingredients was inappropriate. They argued that, because of technical advances, the use of corn sweeteners will likely increase in the future. However, they stated that a significant increase in consumption of total nutritive sweeteners was not expected.

After careful review of the testimony and supporting materials presented at this hearing, the Select Committee has concluded that its tentative conclusions on the use of corn sugar, corn syrup, and invert sugar in food should stand.

Based upon its evaluation of all available information on corn sugar, corn syrup, and invert sugar (including a teratogenic evaluation of dextrose that was not available to the Select Committee), the agency concurs with the conclusion of the Select Committee and proposes to affirm the GRAS status of corn sugar, corn syrup, and invert sugar. (The health aspects of sucrose have been evaluated in a separate report of the Select Committee and are addressed in a proposal published elsewhere in this issue of the **Federal Register.**)

The concerns expressed by the Select Committee about an increase in total dietary sugar consumption create some unique problems in this rulemaking. When the safety of possible expanded consumption of a substance cannot be ascertained, FDA usually proposes to establish specific limitations on use of the substance in the food categories listed in § 170.3(n) (21 CFR 170.3(n)) in which it is used. However, the agency has tentatively concluded that limitations on the use of corn sugar, corn syrup, and invert sugar will not effectively prevent an expansion in total dietary sugar consumption and thus will not adequately address the Select Committee's concerns.

There are several reasons for this tentative conclusion. First, the Select Committee expressed concern about total dietary sugar consumption. In addition to corn sugar, corn syrup, and invert sugar, several other sugars are used in the American diet.

Second, the use of these substances is extremely variable within each of the 43 food categories listed in § 170.3(n). For example, nonalcoholic beverages (§ 170.3(n)(3)) are reported to contain from 0.002 to 33 percent added corn syrup. Even if the agency were to adopt the maximum reported level of use as a specific limitation for each food category (for example, 33 percent for nonalcoholic beverages), the limitation would not prevent manufacturers from increasing the amount of corn syrup in particular food products in the category to the level established by the limitation. Thus, instead of restricting the use of corn syrup, the establishment of specific limitations could result in a significant expansion in total dietary sugar consumption.

Finally, the agency has tentatively concluded that establishment of specific limitations for corn sugar, corn syrup, and invert sugar will not affect the excessive consumption of these ingredients or other dietary sugars that results from voluntary selection of those foods that contain a high sugar content. The agency has no authority to regulate an individual's choice among available food products.

Therefore, FDA is proposing to affirm the GRAS status of corn sugar, corn syrup, and invert sugar when it is used in accordance with current good manufacturing practice (CGMP) and to monitor average total dietary sugar consumption. The agency will undertake a new safety evaluation if total dietary consumption increases significantly. The agency believes that this mechanism will permit continued use of corn sugar, corn syrup, and invert sugar at current levels but will also enable FDA to take appropriate regulatory action if there is a significant increase in total dietary sugar consumption.

In the past, regulations for substances affirmed as GRAS with no limitations other than CGMP has usually included the CGMP conditions of use (technical effects, food categories, and maximum levels of use in these food categories) that were reported in the 1971 NAS/NRC survey. However, for the reasons cited above the agency has concluded that it is inappropriate to include these

[2] *Ibid.*, pp. 15–16.

[3] *Ibid.*, p. 17.

CGMP conditions of use in the proposed affirmation regulations for corn sugar, corn syrup, and invert sugar. Consequently, the agency is proposing, instead, to affirm the GRAS status of corn sugar, corn syrup, and invert sugar when it is used under general conditions of CGMP. FDA emphasizes, however, that this proposal to adopt only CGMP limitations should not be interpreted to mean that increased consumption of corn sugar, corn syrup, invert sugar, and other sugars is being endorsed by the agency. In fact, the Select Committee and FDA share concern regarding any significant increase in total sugar consumption.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency proposed to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

In 1976, the average annual per capita consumption of all sugars (including beet, cane, and corn sugars, honey, and edible syrups) was estimated by USDA (USDA Sugar and Sweetener Report, SSR-Vol. 2, No. 9, Sept. 1977) to be approximately 126 pounds. Should this total figure increase significantly, or should new scientific evidence reveal that corn sugar, corn syrup, or invert sugar poses a potential hazard to public health, a new safety evaluation will be undertaken.

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In a 1974 FDA survey on levels of heavy metals in foods, high levels of lead and cadmium were found in approximately 6 of 71 samples of refined sugar. However, the agency was unable to confirm the acccuracy of the results. FDA is currently conducting a study that will develop additional data to check the accuracy of the results and, if accurate, to determine whether these impurities can be eliminated or reduced by using current good manufacturing practice. Therefore, as part of this proposal, the agency is requesting additional data from manufacturers on levels of lead and cadmium in unrefined beet and raw cane sugar as well as in unrefined corn sugar, corn syrup, and invert sugar. Levels of these heavy metals should also be reported for the ingredients used during all stages in the refining processes. Data obtained from both the FDA study and manufacturers will be used to determine potential sources (e.g., soil and fertilizer, machinery, manufacturing processes) of lead and cadmium contamination that may contribute to the final levels of these contaminants observed in these sweeteners. On the basis of the information received, the agency will determine whether further action is necessary to limit the levels of lead and cadmium in sucrose, corn sugar, corn syrup, and invert sugar. The data and information requested may be submitted on or before March 30, 1983, to the Dockets Management Branch (address above).

Because no food-grade specifications exist for invert sugar at the present time, the agency will work with the Committee on Codex Specifications of the National Academy of Sciences to develop acceptable specifications for this ingredient. Corn syrup is required to meet the specifications of § 168.120 (b) and (d) (21 CFR 168.120 (b) and (d)), but a study is being undertaken to determine if additional food-grade specifications for this ingredient are necessary. Development of these specifications, as well as any revisions in the current Food Chemicals Codex specifications for corn sugar, will include consideration of the data received by the agency on levels of lead and cadmium in invert sugar, corn syrup, corn sugar, and sucrose. If acceptable specifications are developed, the agency will incorporate them into these regulations at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if these ingredients comply with the description and specifications in the proposed regulations an are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

FDA has received a copy of a letter addressed to the Secretary of the Department of Health and Human Services from the Center for Science in the Public Interest, dated July 2, 1981. The letter alleged that the Select Committee failed to assess adequately the role of sugar and refined sweeteners in contributing to several serious health problems, including nutrient deficiencies, obesity and diabetes, heart disease, and high blood pressure. The agency has also received a copy of a response to this letter from the Sugar Association, dated July 13, 1981. Both letters are on file with the Dockets Management Branch. The agency invites comments on the matters discussed in these two letters.

In the past, when a substance has been listed in Part 182 (21 CFR Part 182) as GRAS for both direct and indirect uses, FDA has proposed separate GRAS afirmation regulations in Parts 184 and 186 (21 CFR Parts 184 and 186) to govern its direct and indirect GRAS uses, respectively. Under § 184.1(a) (21 CFR 184.1(a)), however, ingredients affirmed as GRAS for direct food use in Part 184 are considered to be GRAS for indirect uses without a separate listing in Part 186. Based on § 184.1(a), FDA has reconsidered its traditional practice and has concluded that the duplicative listing in Part 186 is unnecessary, as a general rule, and may cause confusion. Thus, unless safety considerations make it necessary to impose specific purity specifications or other restrictions on the indirect use of a GRAS substance, FDA will no longer list in Part 186 substances that are affirmed as GRAS for direct use in Part 184. In keeping with this change in policy, FDA is not proposing a separate listing in Part 186 for the indirect uses of corn sugar, corn syrup, and invert sugar. The indirect uses of these ingredients would be authorized under §§ 184.1857, 184.1865, and 184.1859, respectively, and § 184.1(a).

In the case of corn sugar, corn syrup, and invert sugar, FDA believes that the general requirements that indirect GRAS ingredients be of a purity suitable for their intended use in accordance with § 170.30(h)(1) (21 CFR 170.30(h)(1)) and used in accordance with current good manufacturing practice are sufficient to ensure the safe use of this ingredient.

Therefore, the agency has not proposed any specific purity specifications for their indirect use.

Although the policies discussed in the two preceding paragraphs are not inconsistent with FDA's current regulations, FDA published a proposal in the **Federal Register** of June 25, 1982 (47 FR 27817) to amend its procedural regulations in Parts 184 and 186 to reflect clearly these policies.

This proposal does not include the agency's evaluation of the safety of high-fructose corn syrup as a direct human food ingredient. FDA has received several GRAS affirmation petitions for high-fructose corn syrup and intends to act on these petitions in a separate **Federal Register** notice.

Copies of the scientific literature reviews on corn sugar and on dental caries and carbohydrates, a teratogenic evaluation of dextrose (corn sugar), and the report of the Select Committee are available for review at the Dockets Management Branch (address above), and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Corn sugar.[3]	PB-223-853/AS	A17	$27.50
Dental caries and carbohydrates.[2]	PB-241-963/AS	A04	8.00
Dextrose.[3]	PB-260-775/AS	A03	6.50
Corn sugar, corn syrup, and invert sugar.[4]	PB-262-659/AS	A03	6.50

[1] Price subject to change.
[2] Scientific literature review.
[3] Teratogenic evaluation.
[4] Select Committee report.

This proposed action does not affect the current use of corn sugar, corn syrup, and invert sugar in pet food or animal feed.

The format of the proposed rule is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) §§ 184.1857, 184.1859, and 184.1865 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by that Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices, Flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under 21 CFR 5.11 (see 47 FR 16010; April 14, 1982), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.90 [Amended]

1. Part 182 is amended in § 182.90 *Substances migrating to food from paper and paperboard products* by removing "Corn sugar (sirup)" and "Invert sugar" from the list of substances.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended by adding new §§ 184.1857, 184.1859, and 184.1865 to read as follows:

§ 184.1857 Corn sugar.

(a) Corn sugar ($C_6H_{12}O_6$, CAS Reg. No. 50–99–7), commonly called D–glucose, anhydrous or dextrose, is the chemical *alpha*–D–glucopyranose, anhydrous. It is produced by the complete hydrolysis of corn starch with safe and suitable acids or enzymes.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 130, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, D.C., 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C., 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

§ 184.1859 Invert sugar.

(a) Invert sugar (CAS Reg. No. 8013–17–0) is a mixture of glucose and fructose that results from the hydrolysis of sucrose with safe and suitable enzymes. Invert sugar is marketed as a component of invert syrups that also contain sucrose.

(b) FDA is developing food-grade specifications for invert sugar in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

§ 184.1865 Corn syrup.

(a) Corn syrup, commonly called glucose syrup, is obtained by partial hydrolysis of corn starch with safe and suitable acids or enzymes. Depending on the degree of hydrolysis, corn syrup may also contain maltose and higher saccharides.

(b) The ingredient meets the specifications as defined and determined in § 168.120 (b) and (d) of this chapter, respectively. FDA, in cooperation with the National Academy of Sciences, is undertaking a study to determine if additional food-grade specifications for corn syrup are necessary.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

The agency is unaware of any prior sanction for the use of these ingredients in food under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 342), and the failure of any

person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184, 186), as appropriate.

Interested persons may, on or before January 31, 1983, submit to the Dockets Management Branch (address above), written comments regarding this proposal. 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.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: November 2, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-32494 Filed 11-23-82; 11:30 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 79N-0142]

Sucrose; Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that sucrose is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under a comprehensive safety review being conducted by the agency.

DATES: Comments by January 31, 1983.

Data on levels of lead and cadmium by March 30, 1983.

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

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of sucrose has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of sucrose.

Sucrose, commonly known as table sugar, granulated sugar, cane sugar, or beet sugar, is a disaccharide of glucose and fructose. It is the most abundant carbohydrate in the sap of land plants. Sucrose is manufactured primarily from the juice extraced from sugar cane or sugar beets. The raw sugar is then clarified, crystallized and refined.

Sucrose is currently GRAS for use in food under § 182.1(a) (21 CFR 182.1(a)), which was published in the **Federal Register** of November 20, 1959 (24 FR 9368). It was also sanctioned for flavoring, curing, and seasoning sausage, ham, and poultry by the United States Department of Agriculture (USDA) prior to enactment of the Food Additives Amendment of 1958. In addition, sucrose is listed in § 182.90 (21 CFR 182.90) as a GRAS substance that migrates from paper and paperboard products used in food packaging, under a regulation published in the **Federal Register** of June 17, 1961 (26 FR 5421). Sucrose is also permitted as a mandatory or optional ingredient in many standardized foods.

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which sucrose was used and the levels of usage. NAS/NRC combined this manufacturing information with information on consumer consumption of foods to obtain an estimate of consumer exposure to this ingredient. In 1970, domestic consumption of sucrose was about 22 billion pounds. The NAS/NRC survey reported that 25 percent was sold for home use, 5 percent to institutional users, and 70 percent to food processors. Domestic consumption has changed little in recent years. Per capita consumption was about 100 pounds in 1925, 98 pounds in 1960, and 102 pounds in 1970.

Sucrose has been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 1,980 abstracts on sucrose was reviewed, and 58 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review reveals the following information, as summarized in the report of the Select Committee on GRAS Substances (the Select Committee), chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Sucrose is largely absorbed in the small intestine after being hydrolyzed by a specific disaccharidase, sucrase, located in the brush border. There is also evidence that sucrose can be absorbed unchanged to a small extent, particularly at high dietary levels. This conclusion is based on the appearance of sucrose in the urine. Apparently sucrose, once absorbed in the blood stream, is restricted to the extracellular fluid and is excreted unchanged.

After sucrose is hydrolyzed in the brush border, glucose and fructose are actively absorbed into the portal circulation. Some of the fructose is converted to glucose in the mucosa; in animal species, conversions appear to vary between 10 and 70 percent. For man, conversions from 26 to 70 percent have been reported.

The rate of absorption of the component monosaccharides appears to be a function of the form in which they are fed. Thus, serum fructose levels were higher in adult humans fed sucrose than when fed a mixture of glucose and fructose. Release of fructose by hydrolysis of sucrose within the brush border may facilitate absorption of fructose; also the furanose ring structure of fructose as released may be more readily absorbed than the equilibrium mixture of pyranose and furanose forms attained after being in solution for some time. There also appears to be a specific disaccharide effect on the induction of certain lipogenic enzymes in the rat liver by feeding sucrose or maltose as compared to feeding the component monosaccharides.

Since nearly all ingested sucrose is absorbed as glucose and fructose, its metabolism is essentially that of these two monosaccharides. The metabolism of glucose and fructose has been discussed extensively.

Evidence on the ability of dietary sucrose and fructose to modify serum and liver lipid patterns in animals is conflicting. Increased serum triglycerides, total liver lipid and serum cholesterol have been reported. However, these effects appear to depend upon several factors that may be summarized as follows:

(1) Different animal species and different strains of the same species respond differently to the same dietary manipulation.

(2) In general, cholesterol must be added to the diet to get hypercholesteremia when sucrose is fed. However, increased serum cholesterol with no added cholesterol in the diet has been reported.

(3) Adaptation can occur with time so that the effects found in short-term experiments are decreased or disappear when the experimental period is lengthened.

(4) The sex of the animals appears to play a role. Female rats show no changes under conditions that produce significant increases in serum lipid levels in male rats.

(5) Age of the animal is significant and more extensive effects are found in mature rats than young ones. On the other hand, sucrose feeding early in life has been reported to potentiate the effect later in life. The mechanism of these effects is not well defined and several hypotheses have been presented.

Similar conflicting results have been obtained in studies with man which have been reviewed in several papers. Ahrens and his colleagues introduced the concept of carbohydrate-induced lipemia and suggested that carbohydrates, rather than lipids, may have a dominant effect on atherosclerosis. Although the effect of carbohydrates on serum lipids has been confirmed, a variety of factors influence serum lipid levels. Not the least among these is the composition of the diet particularly in those experiments that show large differences in the effects of sucrose compared to starch. In these experiments, as much as 500 g of the test substances (corn starch or sucrose) were fed daily. Other factors include age and sex. on the whole, the effects of dietary carbohydrate on serum cholesterol in man appear to be less significant than those produced by the type and amount of dietary fat, and these effects of carbohydrate are unlikely to be of importance within the normal range of diets consumed by man. The effect of dietary carbohydrates on serum triglycerides, while more consistent, still appears of lesser significance than that produced by fat. Moreover, these changes appear to be of acute significance, longer periods of experimentation resulting in adaptation and return to initial values. These changes are consistent in that higher plasma triglyceride levels result from feeding high levels of sucrose as compared to starch. However, sucrose appears to have no greater effect than starch on serum triglyceride levels in normolipemic men in energy balance, when the level of sucrose in the diet is comparable to the average U.S intake.

Sucrose feeding appears to be of greater significance in hyperlipemic individuals in that changes in serum cholesteol and triglycerides, particularly the latter, are more exaggerated when sucrose is added to or removed from the diet. In other experiments, these changes have been attributed to a synergistic effect of dietary sucrose and animal fat or to the caloric level of the diet. Studies of free-living populations have indicated a prevalence of hyperglyceridemia (serum triglycerides $\geq$ 200 mg per dl) up to 27 percent in adult males. Although several investigators have found elevated serum triglycerides to be associated with increased susceptibility to coronary artery disease, serum cholesterol level appears to be more significantly associated, and hypertriglyceridemia *per se*, except in women over 50, does not appear to be an independent risk factor in coronary artery disease. One study, however, indicated elevated serum triglycerides and cholesterol to be risk factors independent of each other. A firm association between sugar consumption and coronary artery disease has not been established.

The oral LD_{50} (11 days) for sucrose given as a single dose by intragastric cannula has been estimated to be 35.4$\pm$7.0 g per kg in adult male Wistar rats and 29.7$\pm$3.7 g per kg in adult female Wistar rats. The clinical signs associated with this toxicity included hypokinesia, prostration, abdominal bloating, diarrhea and cyanosis. Deaths in the first 10 hours appeared to be due to gastroenteritis and capillary congestion of the brain and meninges. Increased urine volume also was noted.

Boyd and his colleagues also investigated the effect of several factors on the acute toxicity of sucrose. The following were found to modify the toxic response: volume of dose (in distilled water), sex, size of animal and dose schedule. The toxic effects appeared, in part, to result from the hyperosmotic nature of the test solutions and the physical effects of large intragastric volumes, and not to be related to the toxicity of sucrose *per se*.

The oral LD_{50} (100 days) for rats was estimated to be 28.5$\pm$1.3 g sucrose per kg per day. The dose was administered daily by intragastric cannula to young male rats. Because all animals were fed a standard chow diet and caloric intake was the same in all groups, it is conceivable that these results were complicated by malnutrition of the test animals receiving the higher dose levels. This may explain the fact that considerably higher levels of sucrose often produce no toxic effects when fed as part of an experimental ration.

In another study the relative toxicities of several sugars, including sucrose, were estimated when fed as 80 percent of the diet to rats for 26 weeks. Although no deaths were observed, changes were found in organ weight, hepatic fat deposition and plasma cholesterol. Fructose produced the most marked changes and glucose the least; sucrose had an intermedate effect, presumably due to its fructose content.

Sucrose has been a component of experimental animal diets for many years in amounts ranging from 7 to 77 percent of the diet. Since these diets were fed to both control and test groups in the appropriate studies, no significant toxicological effects attributable to the sucrose component of the diet have been reported. It must be noted, however, that in none of thest studies was the toxicity of sucrose itself under examination. One early report suggested that feeding high sucrose diets can result in reproductive failure in rats. In a two-year study, Whitnah and Bogart found that sucrose, but not lactose or starch, caused essentially complete reproduction failure when fed to female rats as 20 percent of the diet (about 10 g per kg body weight).

Several studies have suggested that feeding sucrose in place of starch can decrease life span in animals susceptible to kidney disease. Dalderup and Visser reported a 21-week reduction in life span of male rats susceptible to nephritis when sucrose replaced 15 percent of the starch calories. In a similar experiment, Durand et al. found no effect on life span from substituting sucrose for starch in a strain of rat not susceptible to kidney disease but a decrease was noted when a susceptible strain was tested.

Preliminary results indicate that supplementation of the diet with sucrose may cause a small increase in blood pressure. Mean diastolic pressure of 26 human volunteers increased from 73.4$\pm$1.3 mm Hg on their normal diets to 78.2$\pm$1.2 mm Hg when the normal diets were supplemented with 200 g sucrose. Composition of the total diet was not given.

A number of studies utilizing a variety of protocols have shown no evidence of carcinogenicity resulting from the administration of sucrose. No tumors were found when sucrose was injected intraperitoneally or subcutaneously in rats and mice for varying periods of time. Hueper also found no evidence of carcinogenicity when rats and mice were injected subcataneously with 25 percent sucrose solutions twice weekly for two years. In feeding studies in which sucrose was included in the diet at levels ranging from 10 percent for mice to 77 percent for rats (about 15 and 40 g per kg body weight, respectively), no increase in tumor incidence was found that could be attributed to the feeding of sucrose.

No teratogenic effects were noted in white New Zealand rabbits intubated with sucrose at levels up to 10 g per kg body weight per day during the 6th to 18th day of gestation. In addition to lack of teratogenic effect, no evidence of embryonecrosis was noted. In a similar study, no effect on nidation, fetal and maternal survival, and organogenesis was noted in mice and rats fed doses up to 1.6 g per kg per day for 10 days.

Yudkin has proposed that the consumption of sucrose is an important factor in the etiology of coronary heart disease. In general, his hypothesis may be summarized as follows:

(1) Mortality rates due to cardiovascular disease in several countries are correlated with sucrose consumption.

(2) There is a dynamic relationship between increasing sucrose consumption and cardiovascular disease.

(3) Individuals with cardiovascular disease consume more sugar than normal persons.

(4) Sucrose induces hyperlipemia and hyperinsulinemia which in turn may influence cardiovascular disease.

While data can be presented to support each of these points, there are conflicting reports. For example, the consumption of sugar is high in several countries but the incidence of cardiovascular disease is low. In addition, the relationship between individual sucrose intake and the incidence of cardiovascular disease has not been confirmed by other investigators. These workers noted a correlation of sucrose consumption with cigarette smoking which could lead to an apparent association between sucrose intake and cardiovascular disease. In a recent report, a Joint Working Party of the Royal College of Physicians of

London and the British Cardiac Society concluded that there is no firm evidence linking sugar intake and coronary heart disease.

Several reports suggested an impaired glucose tolerance in rats and humans fed sucrose for several weeks. Feeding sucrose resulted in increasing and extending the hyperglycemic period while starch produced an opposite effect. In other experiments on human subjects high sucrose diets (up to 64 percent) caused an increase in insulin response in a standard glucose tolerance test. While these results suggest that long-term consumption of sucrose can result in a functional change in the capacity to metabolize carbohydrates and thus lead to diabetes mellitus, recent reports tend to contradict this hypothesis. For example, Medalie *et al.* concluded that diet was not significantly associated with the development of diabetes mellitus from a multivariate analysis of findings in a study of the development of the disease in 10,000 adult men. Obesity and peripheral vascular disease were significantly associated. Anderson *et al.* reported improvement in glucose tolerance when high sucrose diets were fed. Brunzell *et al.* reported improved glucose tolerance in diabetics fed high sucrose diets after or during insulin or oral sulfonylurea therapy. It is important to note that improved glucose tolerance occurs only when caloric intake is not increased. Thus, the primary effort in control of diabetes mellitus appears to be restriction in total caloric intake rather than restriction in carbohydrate intake.

It may be noted that the Advisory Panel of the Committee on Medical Aspects of Food Policy (Nutrition) on Diet in Relation to Cardiovascular and Cerebrovascular Disease, Department of Health and Social Security, United Kingdom, included in its 1974 report the recommendation that "the consumption of sucrose, as such or in foods and drinks, should be reduced, if only to diminish the risk of obesity and its possible sequelae."

Dental caries is an infectious disease involving a multifactorial etiology that, in addition to the infectious organism, includes a susceptible target and an environment conducive to the growth of the infectious agent. The process begins with the production by cariogenic organisms such as *Streptococcus mutans*, of long chain polysaccharides (polyglucans) that adhere to the teeth, entrapping bacteria and forcing close contact between the cariogenic organisms and the tooth surface. These organisms also produce lactic and other acids that attack the enamel surface of the tooth, decalcifying and ultimately producing a hole in the surface. The primary substrate for the production of both plaque and organic acids is carbohydrate although other dietary factors such as phosphate can modify this response. Several investigators have found sucrose to be the most cariogenic substance among sugars and foods tested in animal experiments. In other studies, however, glucose, fructose, and other sugars have been shown to be almost as cariogenic as sucrose when fed under controlled feeding conditions. Individuals with hereditary fructose intolerance who avoid all forms of sweets: chocolates, candies, cakes, pastries and other sucrose and fructose-containing foods have less dental caries than the general population. However, dental caries occur in populations who have never used sugar or any other processed foodstuff.

While the cariogenicity of sucrose appears to be well established in animal studies, the differences in feeding patterns and tooth structure between experimental animals and man are significant, thus raising the question of the role of sucrose in human caries experience. In an extensive human institutional study, the Vipeholm study, 436 adult inmates of a Swedish mental institution were studied for fives years. Their diets were modified to contain various carbohydrates either as part of the meal or as between-meal snacks. The results of this study suggest that, as in experimental animals, sucrose is cariogenic to humans but the magnitude of this effect is a function of the amount of sucrose consumed, its form and the frequency of consumption. Cariogenicity increased when sucrose was in a "sticky" form that had a strong tendency to be retained on tooth surfaces. Moreover, when such foods were consumed as part of the meal, they were less cariogenic than if they were consumed as between-meal snacks. Sugar solutions produced no additional caries when fed as part of the meal while toffees (44 percent sucrose, 22 percent starch + dextrins, 12 percent maltose and 9 percent monosaccharides) fed between meals were most cariogenic.

The results of the Vipeholm study have been confirmed in a series of other institutional and retrospective studies. In general, these studies, reviewed recently by Bibby suggest that the consumption of high-retention sucrose products between meals correlates well with increased dental caries experience.

Epidemiological studies have documented a decrease in incidence of dental caries in several European countries during wartime when supplies of sucrose were curtailed and an increase to prewar incidence after sugar again became available. However, from a review of data on caries experience in English children and young adults, Jackson concluded that the rise in consumption of sweets and sugars that followed World War II was associated with little or no increase in the incidence of dental caries. Also, it has been pointed out that the effect of restrictions on refined flour as well as sugar under wartime conditions in Europe and their replacement by other carbohydrate sources should not be neglected.

The recent increase in availability and consumption of presweetened cereals has raised the question of their potential cariogenicity. Several studies designd to test the effect of their consumption on dental decay have not revealed any increase in caries when compared to similar diets in which nonsweetened cereals were consumed. On the other hand, Shaw and his associates obtained significant increase in caries in rats fed presweetened cereals as part of their diet. The difference between the studies may be a function of exposure since, in the human studies, the cereals were fed at only one meal each day while the rats were fed *ad libitum*.

The "nursing bottle syndrome" in children is characterized by rampant carious breakdown of the anterior maxillary teeth and occasionally the posterior mandibular teeth. This syndrome is attributed to the practice of placing bottles of sugar-containing solutions (including formulas) in the mouth of an infant at bedtime and allowing the infant to fall asleep with the bottle in his mouth. The result is the establishment of excellent conditions for the growth of oral flora and the formation of plaque. Some effort has been made to associate this syndrome with the consumption of milk. However, the results strongly suggest that most of the components of milk tend to be protective against caries and that the primary agent in this syndrome is the carbohydrate, either lactose or, more effectively, sucrose.

It is clear from the reports in the literature on dental caries that sucrose is among the most cariogenic substances. However, the magnitude of the effect is complex and depends on frequency of consumption, duration of exposure, the form in which the sucrose is fed, and the nature of the other materials eaten with sucrose.[1]

Qualified scientists of the Select Committee have carefully evaluated all of the available safety information on sucrose. In the Select Committee's opinion:

Sucrose is the standard of naturally-occurring sweetness, joining other nutrients usually carbohydrate in nature, that comprise a group of palatable foodstuffs known to be relatively efficient sources of energy, simple in composition and rapidly metabolizable for utilization and storage. Sucrose has been used routinely since antiquity to improve the palatability of food preparations.

By all conventional tests, sucrose is a substance of extremely low acute toxicity. Consumption of sucrose in large amounts or at frequent intervals contributes to the development of dental caries. Overconsumption of sucrose probably contributes to obesity and possibly results in dietary imbalances and in modification of lipid metabolism which potentiates coronary heart disease. Tenuous relationships between sucrose ingestion and diabetes mellitus and other diseases also have been suggested. The possibility that sucrose may be involved in such deleterious effects continues to stir controversy, as is evident by the size of the scientific and popular literature on sugars in the human diet and the appearance of new research findings and concepts. Consequently, broad generalizations based upon the inconclusive evidence now available must be made and viewed with caution.

One of the important facts is that sucrose is both a significant natural constituent of food and a major additive to foods and beverages. It is commonly used by the consumer and added by food processors as a component of various foods. While per capita consumption of sucrose has changed little in the United States over the past 50 years, it is also true

[1] "Evaluation of the Health Aspects of Sucrose As A Food Ingredient," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1976, pp. 5–12.

that about 70 percent of the per capita intake is now contributed by processed foods. This situation makes it difficult to exercise individual choice in the selection of a low sucrose diet.

Unlike most other foods, sucrose furnishes virtually only energy. While sucrose makes a substantial contribution to dietary caloric needs, in excessive amounts its effect on the intake of other nutrients may result in nutritional imbalances and, at least marginal, dietary deficiencies. Since over 15 percent of the per capita caloric intake of the population in the United States is from sucrose, it is likely that some individuals may eat enough to exclude adequate amounts of other foods that furnish required nutrients.

Findings linking ingestion of sucrose with diabetes are essentially circumstantial. There is no plausible evidence that sucrose, except as it is a non-specific source of excessive calories, is related to the disease. In those experiments in which impaired glucose tolerance was measured, highly distorted dietary patterns and excessive sucrose intakes were required.

The experimental evidence associating sucrose with cardiovascular disease is also less than clear. It seems likely that the observed hyperlipidemic effects of high levels of sucrose in the diet of animals and man are due primarily to its relatively rapid rate of hydrolysis and absorption and that any differences between the metabolism of its hydrolytic products, glucose and fructose, are of questionable significance. There is no evidence that ingestion of sucrose in the concentrations that occur in the average diet causes significant elevations in blood cholesterol of other lipids. Furthermore, it would appear that the primary dietary factors involved in cardiovascular disease are the nature and amount of fat in the diet. Thus, the role of sucrose in cardiovascular disease appears to be secondary although it may represent a potentiating factor in its etiology.

Of all the carbohydrates tested, sucrose is among the most cariogenic. Individuals who assiduously avoid consumption of sucrose because of an inborn error of metabolism—fructose intolerance—generally have little or no dental caries. However, dental caries can and do occur in people who have never used sugar or processed foods. Various factors affect the cariogenicity of sucrose and other foods.

These include frequency and duration of exposure, age of the subject, and stickiness of the sugar or materials with which it is consumed. Honey and figs, for example, are highly cariogenic and pregelatinized starches also are conducive to the development of dental caries. The significant effects of between-meal eating on the frequency and severity of dental caries has been demonstrated. Protection against dental caries is facilitated by limitation of the frequency of consumption of sucrose and other cariogenic foods. Informing the consumer of the sugar content of foods by appropriate labeling could lead to judicious selection of sweetened foods. Choices could be made easier with a greater selection of less sugared foods in the market place.[1]

The Select Committee concludes that reasonable evidence exists that sucrose is a contributor to the formation of dental caries when used at the levels that are now current and in the manner now practiced. Other than the contribution made to dental caries, the Select Committee found no clear evidence in the available information on sucrose that demonstrates a safety hazard to the public when sucrose is used at current levels and in the manner now practiced. However, the Select Committee stated that it is unable to determine, without additional information, whether an increase in sugar consumption—which would result if there is a significant increase in the total amount of sucrose, corn sugar, corn syrup, and invert sugar that is added to foods—would constitute a dietary hazard.[2]

On May 24, 1976 (see the **Federal Register** of April 7, 1976 (41 FR 14810)) the Select Committee held a public hearing on the findings in its tentative report regarding the safety of sucrose as a food ingredient. Two private citizens and representatives of the National Confectioners Association and the Sugar Association, Inc., made oral presentations. One private citizen and the industry representatives argued that the alleged relationship between sucrose intake and various disease states, except for dental caries, was questionable. Testimony provided by one private citizen supported the possible relationship between sucrose intake and cardiovascular disease. After careful review of the testimony and supporting materials presented at this hearing, the Select Committee has concluded that its tentative conclusions on the use of sucrose in food should stand.

After the publication of the Select Committee's final report on sucrose, a study was completed that suggested that sucrose might be carcinogenic. The Select Committee evaluated this study and found that "the study was designed for purposes other than the evaluation of sucrose. A definitive judgment on the increase in the number of hepatocellular tumors in female mice in the sucrose control group and the potential carcinogenicity of sucrose cannot be made on the basis of this particular experiment and these results alone." The Select Committee concluded that, on the basis of the presently available information, no change in its previous evaluation was necessary.

Based upon its evaluation of all available information relating to the toxicity of sucrose, the agency concures with the conclusions of the Select Committee and purposes to affirm the GRAS status of this substance. (The health aspects of corn sugar (dextrose), corn syrup, and invert sugar have been evaluated in a separate report of the Select Committee and are addressed by FDA in a proposal published elsewhere in this issue of the **Federal Register**.)

The concerns expressed by the Select Committee about an increase in total dietary sugar consumption create some unique problems in this rulemaking. When the safety of possible expanded consumption of a substance cannot be ascertained, FDA usually proposes to establish specific limitations on use of the substance in food categories listed in § 170.3(n) (21 CFR 170.3(n)) in which it is used. However, the agency has tentatively concluded that limitations on the use of sucrose will not effectively prevent an expansion in total dietary sugar consumption and thus will not adequately address the Select Committee's concerns.

There are several reasons for this tentative conclusion. First, the Select Committee expressed concern about total dietary sugar consumption. Sucrose is only one of numerous sugars in the American diet.

Second, the level of use of sucrose is extremely variable within each of the 43 food categories listed in § 170.3(n). For example, breakfast cereals (§ 170.3(n)(4)) are reported to contain from 0.1 to 48 percent added sucrose. Even if the agency were to adopt the maximum reported level of use as a specific limitation for each food category (for example, 48 percent for breakfast cereals), the limitation would not prevent manufacturers from increasing the amount of sucrose in particular food products in the category to the level established by the limitation. Thus, instead of restricting the use of sucrose, the establishment of specific limitations could result in a significant expansion in total dietary sugar consumption.

Finally, the agency has tentatively concluded that the establishment of specific limitations for sucrose will not affect the excessive consumption of sucrose or other dietary sugars that results from voluntary selection of those foods that contain a high sugar content. The agency has no authority to regulate an individual's choice among available food products.

Therefore, FDA is proposing to affirm the GRAS status of sucrose when it is used in accordance with current good manufacturing practice (CGMP) and to monitor average total dietary sugar consumption. The agency will undertake

[1] *Ibid, pp. 13–14.*

[2] *Ibid, pp. 14–15.*

a new safety evaluation if total dietary consumption increases significantly. The agency believes that this mechanism will permit continued use of sucrose at current levels but will also enable FDA to take appropriate regulatory action if there is a significant increase in total dietary sugar consumption.

In the past, regulations for substances affirmed as GRAS with no limitations other than CGMP have usually included the CGMP conditions of use (technical effects, food categories, and maximum levels of use in these food categories) that were reported in the 1971 NAS/NRC survey. However, for the reasons cited above the agency has concluded that it is inappropriate to include these CGMP conditions of use in the proposed affirmation regulation for sucrose. Consequently, the agency is proposing, instead, to affirm the GRAS status of sucrose when it is used under general conditions of CGMP. FDA emphasizes, however, that this proposal to adopt only CGMP limitations should not be interpreted to mean that increased consumption of sucrose and other sugars is being endorsed by the agency. In fact, the Select Committee and FDA share concern regarding any significant increase in total sugar consumption.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations for affirming substances as GRAS under 21 CFR 184.1(b)(1) and 21 CFR 186.1(b)(1). The agency proposed to amend its regulation to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

In 1976, the average annual per capita consumption of all sugars (including beet, cane, and corn sugars, honey, and edible syrups) was estimated by USDA (USDA Sugar and Sweetener Report, SSR—Vol. 2, No. 9, Sept. 1977) to be approximately 126 pounds. Should this total figure increase significantly, or should new scientific evidence reveal that sucrose poses a potential hazard to public health, a new safety evaluation will be undertaken.

In a 1974 FDA survey on levels of heavy metals in foods, high levels of lead and cadmium were found in approximately 6 of 71 samples of refined sugar. However, the agency was unable to confirm the accuracy of the results. FDA is currently conducting a study that will develop additional data to check the accuracy of the results and, if accurate, to determine whether these impurities can be eliminated or reduced by using current good manufacturing practice. Therefore, as part of this proposal, the agency is requesting additional data from manufacturers on levels of lead and cadmium in unrefined beet and raw cane sugar as well as in unrefined corn sugar, corn syrup, and invert sugar. Levels of these heavy metals should also be reported for the ingredients used during all stages in the refining processes. Data obtained from both the FDA study and manufacturers will be used to determine potential sources (e.g., soil and fertilizer, machinery, manufacturing processes) of lead and cadmium contamination that may contribute to the final levels of these contaminants observed in these sweeteners. On the basis of the information received, the agency will determine whether further action is necessary to limit the levels of lead and cadmium in sucrose, corn sugar, corn syrup, and invert sugar. The data and information requested may be submitted on or before March 30, 1983 to the Dockets Management Branch (address above).

Because no food-grade specifications exist for sucrose at the present time, the agency will work with the Committee on Codex Specifications of the National Academy of Sciences to develop acceptable specifications for this ingredient. Development of these specifications will include consideration of the data received by the agency on levels of lead and cadmium in sucrose, corn sugar, corn syrup, and invert sugar. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial sucrose complies with the description in the proposed regulation and is of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

FDA has received a copy of a letter addressed to the Secretary of the Department of Health and Human Services from the Center for Science in the Public Interest, dated July 2, 1981. The letter alleged that the Select Committee failed to assess adequately the role of sugar and refined sweeteners in contributing to several serious health problems, including nutrient deficiencies, obesity and diabetes, heart disease, and high blood pressure. The agency has also received a copy of a response to this letter from the Sugar Association, dated July 13, 1981. Both letters are on file with the Dockets Management Branch. The agency invites comments on the matters discussed in these two letters.

In the past, when a substance has been listed in Part 182 (21 CFR Part 182) as GRAS for both direct and indirect uses, FDA has proposed separate GRAS affirmation regulations in Parts 184 and response to this letter from the Sugar Association, dated July 13, 1981. Both letters are on file with the Dockets Management Branch. The agency invites comments on the matters discussed in these two letters.

In the past, when a substance has been listed in Part 182 (21 CFR Part 182) as GRAS for both direct and indirect uses, FDA has proposed separate GRAS affirmation regulations in Parts 184 and 186 (21 CFR Parts 184 and 186) to govern its direct and indirect GRAS uses, respectively. Under § 184.1(a) (21 CFR 184.1(a)), however, ingredients affirmed as GRAS for direct food use in Part 184 are considered to be GRAS for indirect uses without a separate listing in Part 186. Based on § 184.1(a), FDA has reconsidered its traditional practice and has concluded that the duplicative listing in Part 186 is unnecessary, as a general rule, and may cause confusion. Thus, unless safety considerations make it necessary to impose specific purity specifications or other restrictions on the indirect use of a GRAS substance, FDA will no longer list in Part 186 substances that are affirmed as GRAS for direct use in Part 184. In keeping with this change in policy, FDA is not proposing a separate listing in Part 186 for the indirect uses of sucrose. The indirect uses of sucrose would be authorized under §§ 184.1(a) and 184.1854.

In the case of sucrose, FDA believes that the general requirements that indirect GRAS ingredients be of a purity suitable for their intended use in accordance with § 170.30(h)(1) (21 CFR 170.30(h)(1)) and used in accordance with current good manufacturing practice are sufficient to ensure the safe use of this ingredient. Therefore, the agency has not proposed any specific purity specifications for its indirect use.

Although the policies discussed in the two preceding paragraphs are not inconsistent with FDA's current regulations, FDA published a proposal in the **Federal Register** of June 25, 1982 (47 FR 27817) to amend its procedural regulations in Parts 184 and 186 to reflect clearly these policies.

Copies of the scientific literature reviews on sucrose and on dental caries and carbohydrates, a teratogenic evaluation for sucrose, and the report of the select Committee are available for review at the Dockets Management Branch (address above), and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order no.	Price code	Price [1]
Sucrose (scientific literature review)	PB-228-548/AS	A10	$17.00
Dental Caries and Carbohydrates (scientific literature review).	PB-241-963/AS	A04	8.00
Sucrose (teratogenic evaluation)	PB-234-877/AS	A03	6.50
Sucrose (Select Committee report)	PB-262/AS	A03	6.50

[1] Price subject to change.

This proposed action does not affect the current use of sucrose for pet food or animal feed.

The format of the proposed rule is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1854 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by that Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices, flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under 21 CFR 5.11 (see 47 FR 16010; April 14, 1982), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 82.1 [Amended]

a. In § 182.1 *Substances that are generally recognized as safe,* by removing the word "sugar" from the second sentence of paragraph (a).

§ 82.90 [Amended]

b. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing "Sucrose" from the list of substances.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended by adding a new § 184.1854 to read as follows:

§ 184.1854 Sucrose.

(a) Sucrose ($C_{12}H_{22}O_{11}$, CAS Reg. No. 57–50–1), sugar, can sugar, or beet sugar, is the chemical *beta*-D-fructofuranosyl-*Alpha*-d-glucopyranoside. Sucrose is obtained from sugar cane or sugar beet juice that has been extracted by diffusion, then clarified, crystallized, and refined.

(b) FDA is developing food-grade specifications for sucrose in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

The agency is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184, 186), as appropriate.

Interested persons may, on or before (January 31, 1983) submit to the Dockets Management Branch (address above), written comments regarding this proposal. 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.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: November 2, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-32495 Filed 11-23-82; 11:30 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-2-82]

Deposits of Individual Estimated Tax; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to deposits of individual estimated tax that was published in the **Federal Register** for July 23, 1982 (47 FR 31889). Guidance is urgently needed for taxpayers to know how to comply with estimated tax requirements.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Divisions, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202 –566–3294).

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that was published in the **Federal Register** for July

23, 1982 (47 FR 31889). That notice proposed regulations which would require individuals to deposit their estimated income tax payments through the Federal Tax Deposit (FTD) system at an authorized financial institution or a Federal Reserve Bank instead of forwarding them to an Internal Revenue Service Center. A number of comments were received concerning the notice and a public hearing was held on September 28, 1982. After consideration of all comments regarding the proposed regulations, it was determined that this notice should be withdrawn, so individual taxpayers would continue to forward their estimated tax payments to the appropriate Internal Revenue Service Center as they have in the past.

Drafting Information

The principal author of this document is John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

The proposed amendments to 26 CFR Part 1 relating to deposits of individual estimated tax published in the **Federal Register** for July 23, 1982 (47 FR 31889), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-32669 Filed 11-26-82; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR-187-82]

Terminal Rental Adjustment Clauses in Certain Motor Vehicle Agreements

Correction

In FR Doc. 82-32097 beginning on page 52729, in the issue of Tuesday, November 23, 1982, make the following corrections.

1. On page 52729, "DATES:" paragraph, the first sentence should have read: "These regulations are proposed to apply to certain motor vehicle agreements entered into after (insert date that these regulations are published in the **Federal Register** as a Treasury Decision).

2. On page 52730, first column, the last three lines of the second paragraph under "Scope of the Regulation" should have read: "* * * such an agreement (even though entered into before (insert date these regulations are published in the **Federal Register** as a Treasury Decision)) indicates that the agreement is a sales contract."

3. On page 52731, first column, the last line of paragraph (d) should have read, "* * * entered into after (insert date these regulations are published in the **Federal Register** as a Treasury Decision)."

BILLING CODE 1505-01-M

DEPARTMENT OF OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 37]

Three Year Firearms Licenses

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (AFT) is considering a three year firearms license for manufacturers, importers, dealers, and collectors. Currently, regulations provide for an annual firearms license. This proposed regulation change is intended to reduce paperwork and other administrative costs to the firearms industry and to the Government.

DATE: Written comments must be recieved by January 31, 1983.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044, (Notice No. 437). Written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4405, Federal Building, 12th and Pennsulvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226(202-566-7626).

SUPPLEMENTARY INFORMATION:

Backgrond

A notice of proposed rulemaking amending explosives materials regulations, published in the **Federal Register** November 18, 1980, contained a provision to allow explosives manufacturers, importers and dealers to renew their licenses and permits for a three year period instead of annually. The multiple year explosives license and permit provision received a highly favorable reaction as paperwork reduction initiative. The final rule on explosives regulations published in the **Federal Register** on August, 7, 1981, provides for a three year period on renewals, which is the maximum allowed by explosives law.

A review of the firearms law on licensing periods was done at the same time as the review of the explosives law. Section 923(a) of Title 18 U.S.C. prescribes a "per year" fee for a license. The licensing regulations which implement the law prescribe a one year license period. A detailed review of the law and legislative history indicates that the "per year" does not require a one year licensing period but refers to the fee required for the license. Therefore, a firearms license may be issued for more than a one year period provided the total fee is reflective of the "per year" rate established by Congress.

In the interest of reducing papework and other administrative costs for approximately 190,000 firearms licensees and the Government, we are proposing a three year firearms license.

Public Participation—Written Comments

ATF requests comments concerning this proposed three year firearms license from all interested persons. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. AFT will not recongnize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempted from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request in writing to the Director, within the 60 day comment period. The Director, however, reserves the right to determine in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this notice of proposed rulemaking is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it

will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises and domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is expected to have a significant secondary or incidental effect on a substantial number of small entities in reducing the paperwork and other administrative costs associated with obtaining a firearms license. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or compliance burden on a substantial number of small entities.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority

Accordingly, under the authority in 18 U.S.C. 926 (82 Stat. 1226), the Director proposes the amendment of 27 CFR Part 178 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. Section 178.42 is amended to provide for a three year firearms license by revising the introductory text to read as follows:

§ 178.42 License fees.

Each applicant shall pay a fee at a yearly rate for obtaining a three year license, a separate fee being required for each business or collecting activity at each place of such business or activity, as follows:

* * * * *

Par. 2. Section 178.44 is amended to reflect a three year firearms license by revising the fourth and fifth sentences of paragraph (b) to read as follows:

§ 178.44 Original license.

* * * * *

(b) * * *. The application shall be accompanied by the appropriate fee in the form of (1), cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 7 (Firearms) may be obtained from any regional regulatory administrator or from any District Director.

* * * * *

Par. 3. Section 178.45 is amended to reflect a three year firearms license by revising the first sentence to read as follows:

§ 178.45 Renewal of license.

If a licensee intends to continue the business or activity prescribed on a license issued under this part after the expiration of such license, he shall, unless otherwise notified in writing by the regional regulatory administrator, execute and file prior to the expiration of his license an application for a license renewal, Form 8 (Firearms) (Part 3), accompanied by the required fee, with the District Director for the internal revenue district in which the business or activity is operated. * * *

Par. 4. Section 178.47 is amended to provide for a three year firearms license by revising paragraph (a) to read as follows:

§ 178.47 Issuance of license.

(a) Upon receipt of a properly executed application for a license on Form 7 (Firearms), or Form 8 (Firearms) (Part 3), the regional regulatory administrator may, upon finding through inquiry or investigation, or otherwise, that the applicant is entitled thereto, issue the appropriate license and copy thereof. Each license shall bear a serial number and such number may be assigned to the licensee to whom issued for so long as he maintains continuity of renewal in the same internal revenue district.

* * * * *

Par. 5. Section 178.49 is revised to provide for a firearms license for a three year period as follows:

§ 178.49 Duration of license.

A license is issued for a period of three years. The license shall entitle the person to whom issued to engage in the business or activity specified on the license, within the limitations of the Act and the regulations contained in this part, for the period stated on the license, unless sooner terminated.

Signed: July 28, 1982.

Stephen E. Higgins,

Acting Director.

Approved: August 25, 1982.

John M. Walker, Jr.,

Enforcement and Operations.

[FR Doc. 82-32640 Filed 11-29-82; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A 5-FRL 2248-1]

Redesignation of Areas for Air Quality Planning Purposes; Attainment Status Redesignations: Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to change the carbon monoxide (CO) designation for Montgomery County, Ohio from nonattainment to attainment. This revision is based on a request from the State of Ohio to redesignate this area and on the supporting monitoring and modeling data the State submitted. Under Section 107 of the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

DATE: Comments must be received on or before January 31, 1983.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible). Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne Ernstein, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107 (d) of the Act, the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area

designations may be revised whenever the data warrant such a revision.

EPA's criteria for data that warrant redesignating an area are set out in the June 12, 1979 memo, "Section 107 Redesignation Criteria," by Richard G. Rhoads, Director of EPA's Control Program Development Division. In general, a change from a primary nonattainment designation to either secondary nonattainment or attainment must be supported by either:

(1) Eight consecutive quarters of recent data on ambient air quality which show no violations of the appropriate NAAQS, or

(2) four consecutive quarters of the most recent data on ambient air quality which show both (a) no violation of the appropriate NAAQS and (b) air quality improvement that results from legally enforceable emission reductions.

The primary NAAQS for CO is violated if, more than once in a calendar year, maximum monitored CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 10 milligrams per cubic meter (mg/m^3) of air (10 mg/m^3), or (2) the maximum allowable 1-hour concentration of 40 mg/m^3.

On May 29, 1981, the State of Ohio submitted a request to EPA proposing a redesignation of Montgomery County, Ohio from nonattainment to attainment for CO. Additional comments, guidance requests and supporting data were submitted by the State and the Regional Air Pollution Control Agency (RAPCA) on December 18, 1981, March 31, 1982 and July 2, 1982. In response to these submittals, EPA sent to the State of Ohio policy guidance and supplemental support data requests on September 21, 1981 and April 7, 1982.

According to the monitoring data the State submitted, there are no violations of the 1-hour NAAQS for CO. Violations of the 8-hour standard were observed prior to 1979. For specific data please see the technical support document which is available at EPA's Region V office.

Additional information in the July 12, 1982 letter from the State indicates that no excedance of the 8-hour standard had occurred through May of 1982.

In proposing this designation revision, the State has taken into consideration violations that occurred at the 117 South Main site and the 7 East Fourth site prior to 1979. Monitoring was terminated at the 117 South Main site in 1978 and the monitor was moved to the 7 East Fourth site. Both of these sites are microscale monitoring locations near the same intersection, Fourth and Main, and both monitoring sites reflect the air quality impacts in the immediate vicinity of this intersection.

Since the 117 South Main site experienced standard violations up until the time of its shutdown, EPA requested in the April 7, 1982 letter modeling data to demonstrate that CO concentrations have been significantly reduced between 1978 and the present due to emission reductions. Using the emissions inventory calculation sections of EPA's Volume 9 guidelines, RAPCA demonstrated that a 31 percent emission reduction from 1978 to 1982 would occur in the vicinity of the intersection of Fourth and Main.

Assuming a background concentration at 1.8 ppm (8-hour average), a linear rollback estimate was applied to the second-high concentration in 1978 to demonstrate that a CO standard excedance would not have occurred in 1982 at the original monitoring site. In addition, the 7 East Fourth site has shown no violations of the CO NAAQS since 1978. Therefore, more than eight calendar quarters of violation-free air quality levels have been observed.

EPA finds this demonstration to be acceptable and proposes to approve the redesignation of Montgomery County, Ohio to attainment for CO.

All interested persons are invited to submit written comment on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether EPA will aprove the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407)

Dated: November 5, 1982.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 82-32725 Filed 11-29-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-764; RM-4211]

FM Broadcast Station in Charlotte Amalie, Virgin Islands; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of Class B FM Channel 271 to Charlotte Amalie, Virgin Islands, in response to a petition filed by Thousand Islands Corporation. The proposed assignment could provided a third FM service to Charlotte Amalie.

DATES: Comments must be filed on or before January 3, 1983, and reply comments must be filed on or before January 18, 1983.

ADDRESS: Federal Communications Commission, Washingtron, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: November 5, 1982.

Released: November 16, 1982.

1. A petition for rule making was filed September 20, 1982, by Thousand Islands Corporation ("petitioner") seeking the assignment of Class B Channel 271 to Charlotte Amalie, Virgin Islands, as its third FM assignment. Petitioner failed to state that it would apply for the channel, if assigned. It is expected to do so in its comments. The channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the provision of the third FM broadcasting service to charlotte Amalie, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Charlotte Amalie, VI.....	226,250	226,250, and 271.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in

the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may filed comments on or before January 3, 1983, and reply comments on or before January 18, 1983, and are advised to read the Appendix for the proper procedures.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.410 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at tis headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-32603 Filed 11-29-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 230
Tuesday, November 30, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States, to be held at 9:00 a.m., Thursday, December 16, 1982, at 2120 L Street, N.W., Lower Level (Hearing Room No. 3).

The Committee will meet to discuss the status of pending projects, including Professor Stephen Woods study of agency procedures for amending or repealing rules promulgated under "hybrid" rulemaking statues; Fred Emery Associates study of rulemaking as an organizational process, and Professor Ellen Jordan's study of the APA's "good cause" exemption from notice-and-comment requirements.

Attendance is open to the interested public, not limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days prior to the meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202–254–7065.) Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
November 22, 1982.

[FR Doc. 82–32657 Filed 11–29–82; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council will meet December 14, 1982, beginning at 9:00 a.m., in Room 104–A of the U.S. Department of Agriculture Administration Building, 14th and Independence Avenue, Washington, D.C. The agenda will consist of briefings for the Council on Caribbean Basin Initiative programs and activities, and examination of the Caribbean Basin countries in order to formulate a plan of action. The meeting will be open to the public. Written statements may be submitted to Joan S. Wallace, Administrator, USDA/OICD, Room 3047, South Building, Washington, D.C. 20250 until December 10, 1982.

Dated: November 24, 1982.
Robert P. Scherle,
Associate Administrator.

Soil Conservation Service

Bruce Lake Watershed, Indiana; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bruce Lake Watershed, Fulton and Pulaski Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Corporate Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317–248–4350.

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, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: November 22, 1982.
Robert L. Eddleman,
State Conservationist.

[FR Doc. 82–32597 Filed 11–29–82; 8:45 am]
BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[28–11–117]

Application of Northern Air Cargo, Inc. for Certificate Authority Under Subpart Q; Order To Show Cause

AGENCY: Civil Aeronautics Board

ACTION: Notice of order to show cause (82–11–117).

SUMMARY: The Board is proposing to find Northern Air Cargo, Inc., fit, willing, and able and to authorize it to provide interstate air transportation of property and mail in all-cargo service between the points listed in its application.

DATE: Objections: All interested persons having objections to the Board's issuing the proposed certificate shall file, and serve upon all persons listed below no later than December 14, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 40975 and should be addressed to the Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. In addition, copies of such filings should be served upon all persons listed in the Attachment to Order 82–11–117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Chew, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of order 82–11–117 is available from our Distribution section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82–11–117 to that address.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary

November 23, 1982.

[FR Doc. 82–32661 Filed 11–29–82; 8:45 am]

BILLING CODE 6320–01

[82–11–74]

Fitness Determination of Mid-State Helicopters, Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 82–11–74, Order to Show Cause.

SUMMARY: The Board is proposing to find that Mid-State Helicopter, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than December 7, 1982, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Appendix A to Order 82–11–74.

FOR FURTHER INFORMATION CONTACT: Ms. Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–11–74 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82–11–74 to that address.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

November 18, 1982.

[FR Doc. 8232682 Filed 11–29–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Countervailing Duty Investigation; Fresh Asparagus From Mexico

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Mexico of fresh asparagus receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before January 27, 1983.

EFFECTIVE DATE: November 30, 1982.

FOR FURTHER INFORMATION CONTACT: Julia E. Hathcox, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377–0184.

SUPPLEMENTARY INFORMATION:

Petition

On November 3, 1982, we received a petition from the California Asparagus Growers' Association, Washington Asparagus Growers' Association, Michigan Asparagus Growers' and Imperial Valley Asparagus Growers' Association on behalf of the U.S. industry producing fresh asparagus. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers or exporters in Mexico of fresh asparagus receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and therefore section 303 of the Act applies to this investigation. Under this section, since the merchandise being investigated is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition if filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on fresh asparagus, and we have found that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether products or exporters in Mexico of fresh asparagus, as described in the "Scope of Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by January 27, 1983.

Scope of the Investigation

Fresh asparagus currently is imported under item 137.9520 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegations of Bounties or Grants

The petition alleges that producers or exporters in Mexico of fresh asparagus receive the following benefits which constitute bounties or grants: subsidized export financing, tax incentives for export promotion, investment and development subsidies, and basic subsidy programs for certain products.

The petitioner alleges that the above

benefits are realized through a number of programs and methods including:

- Preferential financing for export sales, such as that provided by the Fund for Promotion of Exports of Mexican Manufactured Products (FOMEX)
- Certificado de Devolucion de Impuesto (CEDI) rebates of indirect taxes paid by exporters of specific products
- Tax benefits in the form of credits against federal taxes (Certificates of Fiscal Promotion)
- Reduction of import duties on imported machinery and equipment and raw materials (if equivalent materials are not available from Mexican producers) for companies establishing facilities in the frontier zones, or for companies or producers demonstrating increases in export volume if imported machinery or equipment is used in the production of exports
- Duty-free zones
- Government-financed and operated irrigation projects
- Investment credits for the acquisition by purchasers located in border areas of new machinery and equipment manufactured in Mexico
- Credits provided to promote increased employment or to maintain pre-devaluation employment
- Incentives for companies establishing manufacturing plants in frontier areas
- Duty reduction on imports of raw materials for products sold in free zone or border areas for Mexican companies establishing wholesale warehouses
- Accelerated depreciation for such wholesale warehouse construction in border areas
- Fuel discounts to firms located in the zone adjoining the U.S. border
- Duty reductions for producers on imports of raw materials for the production and distribution of goods covered by the Sistema Alimentario Mexicano
- Tax credits for investments in vehicles used to distribute basic goods
- Reductions in business tax rates for companies in the agricultural sector
- Preferential loans granted to Mexican agriculture
- Credits for crop insurance and marketing reorganizations
- Discounts on fertilizers, insecticides, and seeds
- Credits to producers selling products at prices fixed by the government

A specific allegation in the petition concerns federal tax incentives received by the fresh asparagus producers or exporters under the export tax certificate program known as CEDI. The government of Mexico notified us that as of August 25, 1982, it has discontinued the eligibility of all products for the CEDI program. However, since the CEDI program has not been eliminated, we are including it as part of our investigation to determine whether producers or exporters in Mexico of fresh asparagus in fact receive benefits under this program.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

November 23, 1982.

[FR Doc. 82-32660 Filed 11-29-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Issuance of Permit

On September 15, 1982, Notice was published in the **Federal Register** (47 FR 40584), that an application had been filed with the National Marine Fisheries Service by Gulfarium, Gulf Exhibition Corporation, Fort Walton Beach, Florida 32548 for a permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that on November 23, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Public Display Permit for the above taking to Gulfarium, Gulf Exhibition Corporation, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;
and
Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 23, 1982.

R. B. Brumsted,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-32676 Filed 11-29-82; 8:45 am]

BILLING CODE 3510-22-M

Modification of Permit

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 31 issued to Robert Elsner, Institute of Marine Science, University of Alaska, Fairbanks, Alaska, on July 3, 1974, is modified by deleting Section B-7 and substituting therefor the following: "This Permit is valid with respect to the taking authorized hereunder until December 31, 1984."

This modification is effective on the date of publication of this Notice in the **Federal Register.**

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;
and
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: November 23, 1982.

R.B. Brumsted,

Acting Director, Office of Marine Mammals and Endangered Species National Marine Fisheries Service.

[FR Doc. 82-32678 Filed 11-29-82; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Modification Permit

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 230 issued to Marine World Africa USA, Redwood City, California 94065 on April 18, 1978, (43 FR 17523), is modified as follows:

Section B is modified by deleting Section B-2 and substitution therefor the following:

"This Permit is valid with respect to the activities authorized herein until December 31, 1984."

This modification became effective on November 23, 1982.

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington D.C.;
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;
and
Regional Director, National Marine Fisheries Service, Southeast Region,

9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 23, 1982.

R. B. Brumsted,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc 82-32679 Filed 11-29-82; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Receipt of Modification

Notice is hereby given that Dr. Robert Elsner, University of Alaska, Fairbanks, Alaska requested a modification to Permit No. 31 issued under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) on July 15, 1974. Dr. Elsner requests authority to take 25 harbor seals and/or spotted seals in addition to the 40 animals of this species currently authorized. Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors. Written data or views, or requests for a public hearing on this modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicants and do not necessarily reflect the views of the National Marine Fisheries Service. Documentation pertaining to the above modification request is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: November 23, 1982.

R. B. Brumsted,

Acting Director, Office of Marine Mammals and Endangered Species National Marine Fisheries Service.

[FR Doc. 82-32677 Filed 11-29-82; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1983 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: November 30, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 20, 1982, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (47 FR 36467) of proposed addition to Procurement List 1982, November 12, 1981 (46 FR 55740).

After consideration of the revelant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on the current contractor for the service listed.

c. The action will result in authorizing a small entity to provide a service procured by the Government.

Accordingly, the following service is hereby added by Procurement List 1983:

SIC 7349

Janitorial/Mechanical Services, Federal Building, U.S. Post Office and U.S. Courthouse, Frederica and 5th Streets, Owensboro, Kentucky.

C. W. Fletcher,

Executive Director.

[FR Doc. 82-32687 Filed 11-29-82; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1983; Establishment; Correction

In FR Doc. 82–31658 appearing at page 52101 in the issue for Thursday, November 18, 1982, make the following corrections:

1. On page 52102, second column, the "CLASS 1140" should read "CLASS 1430".

2. In the same column, under "CLASS 1680", fourth line, delete "Wire Bundle Assemblies (SH)".

3. In the same column, sixth line from the botton of the page, the material reading 2″ x 4″ x 820″ should read 2″ x 4″ x 8″.

4. On page 52102, third column, under "Chock Assembly, Wheel, Codit Reflecting (IB)", the tenth and eleventh line should read "(U-shaped)".

5. In the same column, under "CLASS 2540", "Cushion Assembly, Seat Back (SH)", delete the second entry, "2540–00–808–3811".

6. On page 52104, first column, under "CLASS 6532", the second entry under "Gown, Hospital, Patient's Bedshirt (SH)" should read "6532–01–005–8412".

7. On page 52104, second column, under "CLASS 6540", the entries under "Case, Spectacles (IB)" should have read: 6540–01–131–7919 and 6540–01–131–7918.

8. On page 52104, third column, under "CLASS 7195", the entry under "Customer, Wood (SH)" should read "7195–00–132–6642".

9. On page 52107, second column, after the ninth line from the top of the page, insert "7690–00–329–0538" on line 10 and "Decalcomania TP (SH)" on line 11.

10. On page 52108, first column, under CLASS 7930, the fourth entry under "Detergent, General Purpose (IB)" should read "7930–01–055–6122".

11. On page 52108, third column, under "CLASS 8345", "Flag, Signal (IB)", the twenty-second entry reading "8345–00–926–9212" should read "8345–00–926–9216."

12. On page 52110, first column, under "CLASS 8465", "Belt, Individual, Equipment, Nylon, LC–1 (IB)" should read "Belt .....Nylon, LC–2".

13. In the same column, the entry under "Cover, Water Canteen (IB)" should read "8465–00–118–4956".

14. On page 52110, third column, under "CLASS 9920", the entry under "Ash Receiver, Tobacco (IB)" should read "9920–00–682–6757".

15. On page 52112, third column, under "Department of Army", seventh line, "Belmot" should read "Belmont".

C. W. Fletcher,

Executive Director.

[FR Doc. 32688 Filed 11-29-82; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 82-3]

1981 Jukebox Royalty Determination

AGENCY: Copright Royalty Tribunal (Tribunal).

ACTION: Notice of final determination.

SUMMARY: The Tribunal announces the adoption of its final determination in the proceeding covering the distribution to certain copyright owners of jukebox royalty fees deposited for 1981 performances.

FOR FURTHER INFORMATION CONTACT: Commissioner Thomas C. Brennan, Copyright Royalty Tribunal, 1111 20th Street, NW, Room 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: In accordance with 17 U.S.C. 116(c)(3), the Tribunal on October 8, 1982 published notice in the **Federal Register** (47 FR 44605) of the existence of a controversy concerning the distribution of royalty fees paid for 1981 performances of certain musical works by means of coin-operated phonorecord players (jukeboxes). The Tribunal directed all claimants to submit by November 12, 1982 any evidence to be considered by the Tribunal in the distribution of the jukebox royalty fees.

Claimants American Society of Composers, Authors and Publishers (ASCAP), broadcast Music, Inc. (BMI), SESAC and the Italian Book Corporation (IBC) have reached agreement on the distribution of the 1981 jukebox royalties. This agreement provides that the IBC shall receive $800 of the jukebox royalty fund and the remainder of the fund shall be awarded jointly to ASCAP, BMI and SESAC.

Claimant Latin American Music Company requested 9.5% of the royalty fund. This claim is supported by a justification statement asserting the growth of the Spanish speaking population of the United States, claiming copyright ownership or administration of "many" Spanish language songs, and estimating that 35% of all jukebox royalties result from the performance of Spanish product. No Creditable evidence was presented in support of this claim. We make no award to the Latin American Music Company.

Claimant Sammie Belcher, Jr., presented no evidence in justification of his claim. We make no award to Sammie Belcher, Jr.

It is therefore ordered that IBC be awarded $800 of the jukebox royalty fund, and that the balance of the find available for distribution be awarded jointly to ASCAP, BMI and SESAC.

Thomas C. Brennan,

Acting Chairman.

[FR Doc. 82-32665 Filed 11-29-82; 8:45 am]

BILLING CODE 1410-07-M

DEPARTMENT OF DEFENSE

Department of the Army

Dredging of Polluted Sediments From the Ashtabula River and the Placement of Those Sediments at a Proposed Upland Confined Disposal Site at Ashtabula, Ohio; Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. *Description of Action.* The proposed action involves dredging an estimated 400,000 cubic yards of polluted sediments from the Ashtabula River upstream of the 5th Street Bridge and placing the sediments at a proposed upland confined disposal site. The sediments to be dredged are presently classified by the U.S. Environmental Protection Agency as "toxic and hazardous." The proposed disposal site is about 30 acres in size and is located in Ashtabula Township, east of Tillotson Road and between the CONRAIL tracks and U.S. Route 20. The Corps of Engineers will be responsible for dredging, constructing the containment area, and disposing of the polluted material.

2. *Alternatives.* Reasonable alternatives consist of no action and of dredging with disposal at an alternative upland location.

3. *Scoping Process.* Considerable agency coordination has been performed over the past several years in an attempt to find a viable site for the disposal of polluted Ashtabula River sediments. Additional agency and public coordination will be accomplished during preparation of the DEIS. The participation of concerned Federal, State, and local agencies, and other interested private organizations and parties is invited.

Significant issues to be analyzed in the DEIS include sediment and water quality, dredging and sediment handling procedures, fish and wildlife impacts, public welfare and safety, aesthetics, and ground water considerations.

4. *Scoping Meeting.* No scoping meeting is currently scheduled.

5. *Availability.* The Draft EIS is scheduled to be available for review in August 1983.

ADDRESS: Questions about the proposed action and DEIS can be answered by David W. Heicher, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207, telephone 716/876-5454 (FTS 473-2171).

Dated: November 19, 1982.

Robert R. Hardiman,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 82-32656 Filed 11-29-82; 8:45 am]

BILLING CODE 3710-GP-M

Corps of Engineers; Department of the Army

Regulatory Permit To Construct a New England Energy Park In Fall River, Mass; Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: New England Division (NED), Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. EG&G Synfuel, Inc. has made an application for a permit under Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act.

2. The New England Energy Park is a coal gasification project which would gasify 10,500 tons/day of northeastern Appalachian coal to produce 177 billion Btu/day (635 MM scfd) of raw, medium Btu gas. This gas will then be used to fuel a combined cycle gas turbine electrical general plant producing 563 MW (net) of electrical power, and as a synthesis gas feedstock to produce methanol (2,500 tons/day) or synthetic natural gas (47 million $ft.^3$/day). By-products include sulfur, slag and reject heat; wastewater and industrial gases will also be generated.

3. The New England Energy Park is located in the northeast corner of Fall River, Massachusetts, on a 1,900-acre site. The 1,900 acres are part of a 4,500-acre property that EG&G has under a purchase and operation agreement. Small sections of the site extend into Freetown and Dartmouth, Massachusetts.

4. Coal will be delivered by ship to a new coal unloading terminal to be constructed at the site of the former Penn Central railroad yard in Fall River. The site is situated on the eastern shore of the lower Taunton River where it opens into Mount Hope Bay. It is bounded on the north by Ferry Street; on

the east by Almond Street and the existing Conrail freight yard; on the south by the King Phillip Boat Club and on the west by Mount Hope Bay. The property is industrially zoned. An access pier of approximately 500 feet in length and a coal unloading pier eighty-five feet wide by nine hundred-seventy five feet long will be required. It is anticipated that approximately 70,000 cubic yards of material will be excavated. It is proposed to dispose of the material in a containment area along the shore of the rail yard. The containment facility will consist of an impermeable bulkhead/dike system on all four sides.

5. The proposed NEEP development is located approximately 7 miles north and 5 miles east of the Fall River coal terminus site. Trains will convey the coal north from the terminal along existing Conrail track as far as Freetown. From there a new rail corridor will be constructed to provide access to the NEEP site. The proposed rail corridor will consist of one track, a maintenance road, and buried utility lines.

6. A vehicular access road is also planned and will extend from Riggenbach Road (adjacent to the Fall River Industrial Park) and merge with the rail corridor approximately 0.75 mile north of Bell Rock Road. The complete access system will entail 2.3 miles of rail, 0.8 mile of vehicular access, and 2.5 miles of combined rail and vehicular corridor.

7. The proposed gasification/power plant complex will be located on approximately 350 acres of a 1,900-acre site zoned for heavy industry in the northeastern corner of Fall River. The northern and eastern boundaries of the NEEP site are formed by the corporate boundaries of Fall River (with Freetown). The southern portion of the site has an irregular boundary lying generally south of Quanapoag Road and east of the northern third of Copicut Reservoir. The western boundary extends from the former Camp Interlocken site north-northeast to the Fall River corporate boundary. Approximately 30 acres of wetlands will be eliminated if the project is approved.

8. The Environmental Impact Statement will address issues related to potentially significant impacts. Among these could be both the positive and negative socioeconomic impacts of the project. Additional environmental elements will be evaluated for the effects on groundwater/surface water and air quality, noise, on-site wetlands and wildlife, the flood plain, and historic-archaeological resources. Impacts directly related to the construction phase of the proposed project will also be addressed with particular attention to effects on the Copicut Reservoir, Shingle Island Swamp and Mt. Hope Bay estuary.

9. NED will seek assistance to develop and review EIS information by coordinating with other agencies who have the appropriate jurisdiction or expertise. Coordination will be made with at least the following Federal agencies for their assistance: EPA for water discharges, air quality and noise impacts, The Department of Energy for coal conversion technology and energy needs, HUD for community and regional economic analysis, U.S. Fish and Wildlife Service and the National Marine Fisheries Service for wetland and aquatic resources and habitat, and the U.S. Coast Guard for navigation safety. The formal scoping process with Federal Regulatory and review agencies will be initiated in December, 1982.

10. To ensure that no substantive information has been overlooked, the New England Division invites public comments on the proposed project and the EIS. A public scoping process is expected to commence early in 1983. Questions concerning the development of the EIS should be addressed to Mr. Paul E. Pronovost, Impact Analysis Branch, U.S. Army Corps of Engineers, 424 Trapelo Road, Waltham, Massachusetts 02254 (618–647–8552). Questions specifically concerning the processing of the regulatory permit should be addressed to Kenneth Jackson, Regulatory Branch (617–647–8156).

Dated: November 18, 1982.

Carl B. Sciple,

Colonel, Corps of Engineers Division Engineer.

[FR Doc. 82-32644 Filed 1-29-82; 8:45 am]

BILLING CODE 3710-24-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Request For Recommendations On Marketing Of Surplus Firm Power From Federal Columbia River Power System

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Request for Recommendations on Marketing of Surplus Firm Power from Federal Columbia River Power System.

FILE NUMBER: FS–1.

SUMMARY: Under current BPA load and resource forecasts, it appears that the Pacific Northwest will have between 500 and 1000 average megawatts of firm energy surplus to that needed to meet firm obligations available for sale or other disposal from October 1983 through October 1987. A portion of this surplus is expected to be Federal system surplus. Firm surplus conditions could be extended for several years by development of additional resources. BPA welcomes suggestions from its customers, other interested organizations, and the general public as to how firm surplus power might best be marketed or used.

DATE: Recommendations on this subject will be accepted through December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, BPA, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. Oregon callers may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551;

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–345–0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana, 59801, 406–329–3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

Background

In July 1982, the Bonneville Power Administration (BPA) published its *Forecasts of Electricity Consumption in the Pacific Northwest, 1980–2000.* BPA is using this document in its resource and load planning activities pending the completion of the Northwest Power Planning Council's regional load/resource forecast. (The BPA regional

forecast was printed in draft form and circulated for public review and comment in May 1982.) The forecast projects a range of probable 20-year load growth rates for the Northwest from .9 to 2.4 percent per annum, with a baseline rate-of-growth projection of 1.6 percent per annum.

Resources available or planned to meet these loads are listed in the 1982 Pacific Northwest Utilities Conference Committee (PNUCC) *Long-Range Projection of Power Loads and Resources* (Blue Book).

Comparison of these two documents and load forecasts produced by other organizations, as well as consideration of possible additional resources, shows that the Pacific Northwest may expect to find itself with firm resources surplus to those required to meet regional loads for some years. The amount of these expected firm energy surpluses varies with the rate of load growth assumed.

In July 1982, EPA published a proposed "Near-Term Resource Policy," designed to outline how BPA will handle resource acquisitions needed to meet its long-term obligations during this surplus period. (The Near-Term Resource Policy has not yet been made final.)

The *Technical Support Document* which accompanied the proposed Near-Term Resource Policy directly compares the resources available to the Northwest to meet firm loads with the BPA-projected regional loads. In the *Technical Support Document,* resources assumed to be available to the Northwest are are adjusted slightly from those shown in the PNUCC Blue Book to allow for possible loss of energy and capacity for fish mitigation, possible nonconstruction of Creston coal and Skagit nuclear plants, and other variances. (See page 4, *Technical Support Document.*)

Given these premises, the *Technical Support Document* shows a range of surpluses and deficits which may be expected in the Pacific Northwest power system from 1980–2000. Table 1 attached is based upon further refinement of these numbers, and presents year-by-year amounts of estimated regional surplus. Table 1 does not include savings which might be achieved from future conservation programs.

Request for Recommendations

The key question raised by these projections is, how can this surplus best be utilized?

Since construction of the Pacific Northwest-Pacific Southwest Intertie, Northwest utilities have frequently sold power surplus to their needs to utilities in other regions, principally in California. Under the terms of the Regional Preference Act, Pub. L. 88–552, BPA has sold power surplus to its firm obligations on a short-term basis first to utilities within the Pacific Northwest, then, when no further Northwest markets are available, to utilities in other areas.

However, not for the last two decades have BPA and the region's utilities been able to predict long-term availability of firm surplus energy in quantity. This gives rise to the possibility of new marketing methods not previously used by BPA and the region's utilities, and possibly to new uses of the power represented in this firm surplus. BPA is now requesting suggestions from its customers, other interested organizations, and the general public as to how this firm surplus should best be marketed or used.

Applicable Laws

The laws presently applicable to BPA marketing or use of surplus firm power include:

—BPA Project Act of 1937, as ameded.
—Federal Columbia River Transmission System Act of 1974, Pub. L. 93–454.
—"Regional Preference Act," Pub. L. 88–552 of 1964.
—Pacific Northwest Electric Power Planning and Conservation Act of 1980, Pub. L. 96–501.

Transmission Capacity

Another major factor to consider in marketing firm surplus power is the availability of transmission capacity to any potential markets. It would be helpful if this limitation were considered in recommendations submitted to BPA under this request.

At the moment, transmission between the Northwest and Southwest is conducted primarily on the Pacific-Northwest Pacific Southwest Intertie, which consists of one ±400-kV direct-current (d-c) line from The Dallas, Oregon, to Los Angeles, California, and two 500-kV alternating-current (a-c) lines from John Day, Oregon, to Lugo, California, near Los Angeles. The a-c lines interconnect with other transmission lines at various points in Oregon and California. The Intertie has a combined capacity of approximately 4,400 megawatts, scheduled to increase to approximately 4,800 magawatts in 1985 when upgrading of the d-c line, now underway, is completed. There is also a possiblity of an additional 400 megawatts of a-c capacity by 1983–1984.

Several utilities in the Northwest and California, as well as BPA, hold contractual rights to access portions of intertie capacity. For example, Washington Water Power holds contractual right to 112 megawatts of firm Intertie transmission capacity under a contract expiring in 1988. Pacific Power & Light and Portland General Electric hold priority rights in transmitting 270,000 and 1,100,000 megawatt hours, respectively, of "excess" energy annually through the mid-1980's.

Implications for BPA Rates

The Northwest's firm surplus power represents a new firm power resource immediately available to utilities without new capital investment. Because delivery of surplus firm power is assured, purchasers could use surplus firm power to effect a long-term shutdown of high-cost oil or other thermal generation, or could delay completion of other generation now under construction. This could reduce overall power costs to purchasing utilities, and so reduce rates to their consumers.

Surplus firm power will be generated with existing hydroelectric resources as well as with some thermal resources; per kilowatt hour costs of production will be lower than that of power totally derived from thermal resources. Successful marketing of Federal system surplus firm power, in particular, would provide a measure of stability in the volume of BPA sales and an overall lower per-unit power production cost for BPA. This would increase overall BPA revenues, and tend to reduce future BPA rate increases.

1982–1983 Firm Surplus Sales

For operating year 1982–1983, BPA has made approximately 700 average megawatts of Federal system firm surplus energy available for sale to its customers, including utilities outside the Northwest, dependent on availability of suitable transmission capacity. A letter announcing the availability of such Federal system firm surplus energy was sent to all BPA customers on August 27,1982. Approximately 200 average megawatts of Federal system firm surplus have been purchased to date for the period October 1982 through early April 1983.

Fish and Wildlife

The Fish and Wildlife Program adopted on Novembr 15, 1982, by the Northwest Power Planning Council includes modifications to the operation of the Columbia River hydroelectric system to aid downstream salmon and steelhead migration. The modification will reduce the system's firm power capability by an estimated 500 to 550 average megawatts. This reduction is hydroelectric system capability is taken

into consideration in the forecast of surplus firm power described in this notice, i.e., the surplus of firm power is over and above the reduction in hydroelectric system capability caused by changes in system operation for fish and wildlife.

Acceptance of Recommendations

BPA will accept recommendations on the long-term marketing or use of firm surplus power through December 31, 1982. All recommendations should be submitted to Donna L. Geiger, BPA, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212. Verbal recommendations may be made by calling the office of the Public Involvement Coordinator at 503–230–3478. Callers in Oregon outside Portland may call toll-free 800–452–8429. Callers in Califorina, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may call toll-free 800–547–6084.

Copies of all documents listed in this notice may be obtained by contacting the office of the Public Involvement Coordinator at the location above.

Issued in Portland, Oregon, November 22, 1982.

James J. Jura,

Acting Administrator.

TABLE 1.—BPA FORECAST; NORTHWEST BASELINE LOADS AND RESOURCES—CRITICAL HYDRO CONDITIONS

[Average—MW]

	1982–83	1983–84	1984–85	1985–86	1986–87	1987–88	1988–89	1989–90	1990–91	1991–92	1992–93	1993–94	1994–95
Loads:													
System firm loads	17,164	17,820	18,083	18,352	18,821	19,277	19,543	19,842	20,123	20,390	20,667	20,954	21,256
Nonfirm loads	1,043	1,059	1,071	1,083	1,157	1,223	1,240	1,245	1,252	1,253	1,253	1,253	1,259
Total loads	18,207	18,879	19,154	19,435	19,978	20,500	20,783	21,087	21,375	21,643	21,920	22,207	22,515
Resources:													
Net resources	18,102	18,374	19,066	19,375	19,815	19,939	19,530	19,629	19,637	20,355	20,346	20,312	20,289
Firm surplus or deficit	938	545	984	1,024	993	661	(13)	(213)	(486)	(35)	(320)	(642)	(966)
Total surplus or deficit	(105)	(505)	(87)	(60)	(163)	(562)	(1,253)	(1,458)	(1,737)	(1,287)	(1,573)	(1,895)	(2,225)

New Thermal Installation Schedule:
Valmy #2—Sept. 1984
WNP #2—Feb. 1984
Colstrip #3—May 1984
Colstrip #4—July 1985
WNP #3—Dec. 1986
WNP #1 (Delayed 5 yrs.)—June 1991
Creston and Skagit plants not scheduled.

[FR Doc. 82–32645 Filed 11–29–82; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–81–014; FC Case No. 55056–3787–10–12]

Notice and Proposed Modification of an Order Granting a Permanent Fuels Mixture Exemption to the Chesapeake Corp., West Point, VA

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice and Proposed Modification of an Order Granting a Permanent Fuels Mixture Exemption to the Chesapeake Corporation, West Point, Virginia.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Subpart G to modify the permanent fuels mixture exemption granted by Order to a new major fuel burning installation (MFBI), owned and operated by the Chesapeake Corporation (Chesapeake) at its Kraft pulp and paper mill, West Point, Virginia, under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act).

Based upon its review of Chesapeake's October 26, 1982, modification request, ERA is proposing to modify the Order on the basis of its determination that significantly changed circumstances, as defined in 10 CFR 501.102(b), exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the **Federal Register** (see DATE section, below). If no responses are received within the established period, the Order modification, as proposed, shall become final upon the expiration of that period without further action by ERA.

A detailed discussion of the Order and Chesapeake's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed modification of the Chesapeake Order must be received no later than December 30, 1982.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA–093, 1000 Independence Avenue, SW., Washington, D.C. 20585. FC–55056–3787–10–12, should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:
Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–8162;
Allan Stein, Esq., Ofice of General Counsel, Department of Energy, Forrestal Building, Room 6B–178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–2967.

SUPPLEMENTARY INFORMATION: On August 17, 1981, ERA exempted, by Order, Chesapeake's new woodwaste No. 10 power boiler at its West Point, Virginia, plant from the prohibitions of section 202 of FUA, which prohibits the use of natural gas or petroleum as a primary energy source by certain MFBIs. The Order was published in the **Federal Register** on August 24, 1981 (46 FR 42711). Subject to the terms and conditions set forth in the Order, the permanent exemption permitted the use of a fuels mixture of woodwaste and petroleum (No. 6 fuel oil) or natural gas, the latter in an amount not to exceed 25 percent of the total annual BTU heat input of the primary energy sources of the MFBI. Chesapeake's exemption request was filed under the then effective 10 CFR 503.38 and was granted pursuant to section 212(d) of FUA.

By letter of October 26, 1982, Chesapeake requested that ERA modify the Order to delete the reporting requirement that Chesapeake must, pursuant to the former 10 CFR 503.38(g), annually file with ERA a certification that the amount of petroleum or natural gas used in the boiler during the

preceding year did not exceed 25 percent of the total annual BTU heat input of the primary energy sources of that MFBI.

Chesapeake based its request on the fact that since the issuance of the Order with its annual reporting requirement, DOE has issued final rules amending 10 CFR 503.38 so as to delete therefrom reporting requirements for boilers granted fuel mixtures exemptions (46 FR 59872, December 7, 1981).

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding to modify the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G (46 FR 59872, December 7, 1981). Based upon the information contained in Chesapeake's modification request and upon the record as a whole, ERA proposes:

(1) To find that the revision of 10 CFR 503.38 in the final rules published on December 7, 1981, described *supra,* constitutes significantly changed circumstances that warrant a modification of the Order, as provided by 10 CFR 501.102(b); and

(2) To modify the Order to delete therefrom the required annual filing of a certification that the amount of petroleum or natural gas used in Chesapeake's No. 10 power boiler during the preceding year did not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that MFBI.

Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order exempting Chesapeake's No. 10 power boiler from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the **Federal Register.** If ERA receives no responses within the allotted period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C. November 22, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-32653 Filed 11-29-82; 8:45 am]

BILLING CODE 6450-01-M

Santa Fe Energy Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a Proposed Consent Order and provides an opportunity for public comment on the Proposed Consent Order.

DATE: Comments by December 30, 1982.

ADDRESS: Send comments to Sandra K. Webb Director, Houston Office, Economic Regulatory Administration, United States Department of Energy 500 Dallas Street, Suite 610, Houston, Texas 77002.

SUPPLEMENTARY INFORMATION: On November 9, 1982, the ERA executed a proposed Consent Order with Santa Fe Energy Company ("Santa Fe"), of Amarillo, Texas, Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order

Santa Fe, with its home office located in Amarillo, Texas, is a firm engaged in the production and sale of domestic crude oil and was subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR. Parts 205, 210, 211, 212, in connection with Sante Fe's transactions involving crude oil sales during the period September 1, 1973 through January 28, 1981 (the period covered by this Consent Order) the ERA and Santa Fe entered into a Consent Order, the significant terms of which are as follows:

A. Sante Fe produces and sells domestic crude oil. Santa Fe is a "producer" as that term is defined in the Mandatory Petroleum Price Regulations at 10 CFR 212.31, and is subject to the price regulations presently codified at 10 CFR. Part 212, Subpart D.

B. The ERA believes that during the period covered by this Consent Order, Santa Fe sold domestic crude oil from the following California properties at prices in excess of the applicable ceiling prices: Hobson B, Fault Block 2 (Rincon Field, Ventura, CA), Oak Grove (Rincon Field), Sections 27-31-22, 27-31-22(G), 28-31-22, 23-31-22, 1-32-22, 6-32-22 and 1-32-22, R1 (Midway—Sunset Field, Kern County, CA).

C. Santa Fe has discussed settlement with ERA officials. The ERA and Santa Fe disagree in several respects concerning the proper application of the relevant federal statutes and regulations to Santa Fe's pricing of crude oil during the audit period. Both Santa Fe and the ERA believe that their respective positions concerning the alleged civil liability would be sustained if litigated. However, Santa Fe desires to settle all civil disputes with the ERA concerning the specified transactions which occurred during the audit period, rather than incur the expense and inconvenience of litigation. Similarly the ERA believes it is in the best interest of the general public and the U.S. Government to conclude the compliance proceeding now by means of this Consent Order.

D. The provisions of 10 CFR 205.199J, including those regarding the publication of this Notice, are applicable to the Consent Order.

E. In this Consent Order, Santa Fe will pay the sum of $2,700,000, which includes interest within thirty (30) days of the effective date of this Consent Order to DOE for deposit in the U.S. Treasury as miscellaneous receipts. Upon full satisfaction of the terms and conditions of this Consent Order by Santa Fe, the DOE releases Santa Fe from any civil claims that the DOE may have arising out of the specified transactions during the period covered by this Consent Order.

II. Submission of Written Comments

The ERA invites interested persons to submit written comments concerning the terms and conditions of this Consent Order.

You should send your comments to Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, United States Department of Energy, One Allen Center, 500 Dallas, Suite 610, Houston, Texas 77002. You may obtain a free copy of this Consent Order by writing to the above address.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation "Comments on Santa Fe Energy Company Consent Order." The ERA will consider all comments it receives by 4:30 p.m., local time December 30, 1982. You should identify any information or data which, in your opinion, is confidential and submit it in

accordance with the procedures in 10 CFR. 205.9(f).

Issued in Houston, Texas, on the 9th day of November 1982.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 82-32655- Filed 11-29-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Brazil

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Brazil Concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-BR-36, to the Instituto de Pesquisas Espaciais, Brazil, 0.5 grams of normal uranium, and 0.5 grams of thorium, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 22, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-32592 Filed 11-29-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of the Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S-EU-752, to Saunders-Roe Developments, Ltd., the United Kingdom, 300,000 curies of tritium for use in manufacture of illuminated signs, dials, and meters. The U.S.. Nuclear Regulatory Commission has issued export license XB001010, Amendment No. 4 for this material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 22, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-32590 Filed 11-29-82; 8:45am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of the Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer:

RTD/JA(EU)-23, from the federal Republic of Germany to Japan, one fission counter containing 0.18 grams of uranium enriched to 93.16% in U-235, for repair. It is planned to subsequently return the fission chamber to the federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this retransfer will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 22, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-32591 Filed 11-29-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable energy

[Case No. WH-001]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Water Heater Test Procedures to A. O. Smith Corporation

AGENCY: Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. WH-001) granting A. O. Smith Corporation a waiver for its gas water heaters equipped with thermal compensating dip tubes from the existing DOE test procedures for water heaters.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113.1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9127;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9510.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, A. O. Smith Corporation has been granted a waiver for its gas water heaters equipped with thermal compensating dip tubes, permitting the company to use an alternate test method to determine first hour rating.

Issued in Washington, D.C., November 9, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservatrion Program for Consumer Products was established

pursuant to the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3266, which require the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

On May 4, 1981, A. O. Smith Corporation (A. O. Smith), filed a "Petition for Exception; Application for Temporary Exception" with the Office of Hearings and Appeals (OHA) of the Department of Energy in accordance with 10 CFR 205.50, 205.120. By letter dated May 19, 1981, the Associate Director of OHA notified A. O. Smith that since the firm's request pertained to the appropriateness and the accuracy of the test procedures, it had forwarded the submission to the Office of Conservation and Renewable Energy which has jurisdiction, under 10 CFR 430.27, over such applications. By memorandum of the same date, the Associate Director forwarded the petition to the Assistant Secretary for Conservation and Renewable Energy.

In accordance with the provisions of 10 CFR 430.27, granting of relief occurs after a final decision has been reached. Therefore, the "Petition for Exception; Application for Temporary Exception" from A. O. Smith, dated May 4, 1981, has been considered to be a "Petition for Waiver" requiring appropriate action by the Assistant Secretary for Conservation and Renewable Energy.

DOE published the A. O. Smith petition in the **Federal Register** and solicited comments, data, and information respecting the petition. 46 FR 51632 (Oct. 21, 1981). Comments were received from State Industries, Inc. and Bradford-White Corporation, both manufacturers of water heaters. Copies of these comments were sent to the petitioner on May 10, 1982. In the letter of transmittal which accompanied these comments, A. O. Smith was informed that 10 CFR 430.27(d) provides for A. O. Smith to submit a statement to DOE rebutting these comments. No rebuttal statement was submitted. In accordance with § 430.27(g), DOE consulted with the Federal Trade Commission on August 30, 1982 concerning the A. O. Smith petition.

Assertions and Determinations

The A. O. Smith petition seeks a waiver from the DOE test procedures for water heaters on the ground that the procedures give materially inaccurate estimates of the first hour rating of its gas water heaters equipped with thermal compensating dip tubes. First hour rating is a measure of capacity for water heaters. It represents the volume of hot water available to be delivered on demand by a water heater, expressed in gallons. It accounts for the contribution of both storage capacity (tank volume) and recovery rate (the rate at which a water heater can replenish its supply of hot water) to the amount of hot water that can be made available over a one hour period commencing with a tankful of hot water. Water heaters are one of the products covered by the Federal Trade Commission Appliance Labeling Program. First hour rating serves as the basis for making comparisons between water heaters of different energy sources on the Energy Guide labels used in that program.

A. O. Smith's petition alleges that the first hour rating test requirements of a starting temperature of 160°F and a 20°F temperature drop yield an inaccurate estimate of the performance of gas water heaters equipped with the thermal compensating dip tubes. The petition further alleges that: (1) The first hour rating test does not reflect field conditions since the water draw test is not conducted with the burner on as would normally occur, (2) first hour rating's time base of one hour overemphasizes the contribution of a water heater's recovery rate to the value determined, and (3) the temperature ratio adjustment in the calculation formula for first hour rating is arbitrary and capricious.

State Industries, Inc., in commenting on the A. O. Smith petition, took the position that the use of a thermal compensating dip tube in a water heater does not warrant a change in the test method. State Industries has equipped some of its own water heaters with a commercially available thermal compensating dip tube and conducted water draw tests. The company claimed that its test results showed "no beneficial effects in the draw down capabilities when conducted at the prescribed draw rate." State Industries stated that thermal compensating dip tubes can have "detrimental, diluting effects on the stored hot water, impairing the first hour rating" compared with open end dip tubes, under "various" circumstances.

Bradford-White Corporation commented that any revisions to the water heater test procedure that may be granted to A. O. Smith should be published for comment before being put into effect. Bradford-White Corporation further commented that any such revision granted apply to any water heater equipped with a thermal compensating dip tube since dip tubes are available to all water heater manufacturers.

In response to A. O. Smith's petition, DOE finds that the first hour rating water draw test starting condition of 160° F ±5° F mean tank temperature results in materially inaccurate values of first hour rating for gas water heaters utilizing thermal compensating dip tubes. In response to the other allegations made by A. O. Smith in its petition, DOE finds that A. O. Smith is not uniquely aggrieved by any other first hour rating test or calculations requirement.

In reaching its findings, DOE considered that thermal compensating dip tubes of the design used by A. O. Smith function over a specific fixed temperature range. Their purose is to provide controlled mixing of incoming cold water with stored hot water when water is being withdrawn from the water heater. This is accomplished by means of the perforated tube and perforated sleeve construction of A. O. Smith's thermal compensating dip tube. Under the condition of high stored water temperature in a water heater equipped with A. O. Smith's thermal compensating dip tube, the perforations in the tube and sleeve assembly align. Thus, at the start of a water draw, cold water bleeds out of these holes along the length of the dip tube mixing with the stored hot water. This results in an immediate tempering of the outlet water temperature. As the water draw continues and this tempering effect lowers the temperature of the water in

the water heater, the thermal compensating feature of the dip tube causes the perforated sleeve and tube to change position relative to each other. This changes the alignment of the perforations, effectively throttling the amount of cold water bleeding out of the sides of the dip tube. Eventually the temperature of the water in the water heater lowers to the point where the perforations do not overlap at all. When this occurs, the thermal compensating dip tube performs in the same manner as a conventional open end dip tube, that is, it directs all incoming cold water out the bottom end of the dip tube.

Unlike water heaters equipped with conventional open end dip tubes, water heaters equipped with thermal compensating dip tubes can exhibit different first hour rating water draw test results for different stored water starting temperatures. Included in A. O. Smith's petition was data from first hour rating water draw tests which A. O. Smith had conducted on water heaters with thermal compensating dip tubes for starting temperatures of 160° F, 150° F, and 140° F. The test results were 20 gallons, 26 gallons, and 28 gallons, respectively. This data shows the pronounced effect that starting temperature has on the results of first hour rating water draw tests performed on water heaters with thermal compensating dip tubes. By way of comparison, A. O. Smith provided data from first hour rating water draw tests conducted on water heaters with open end dip tubes for starting temperatures of 160° F, 150° F, and 140° F. The test results were identical, 32 gallons, as would be expected.

The test procedures for water heaters specify that the first hour rating water draw test shall be conducted with a stored water starting temperature of 160° F ± 5° F, a water supply temperature of between 68° F and 72° F, and an ambient room temperature of between 65° F and 85° F. These test conditions were established to simulate, not duplicate, the national average field conditions of operation for water heaters, i.e., a stored water temperature of 145° F, an inlet water temperature of 55° F, and a room ambient temperature of 55° F. It was for the convenience of testing that these temperatures were uniformly elevated 15° F to arrive at the test temperatures. (Although the test procedure permits a wide band for ambient room temperature, its actual value is measured during each test and is used to normalize the test results to their equivalent values at an ambient room temperature of 70° F, which is 15° F above field conditions.)

In consideration of the foregoing, DOE has determined that A. O. Smith should be granted a waiver from the test procedures for water heaters for its gas water heaters equipped with thermal compensating dip tubes to permit first hour rating tests to be conducted with the maximum mean tank temperature in the range of 145° F ± 5° F and the water supply to the water heater inlet at a temperature in the range of 55° F ± 2° F. In all other regards, the conditions and requirements of the first hour rating test remain unchanged by this waiver. DOE has made no change to the ambient room temperature specification as a condition of the waiver because ambient room temperature has little effect on the results of first hour rating water draw tests.

In response to A. O. Smith's other assertions regarding the procedure for determining first hour rating:

(1) That the 20° F temperature drop criteria for termination of the first hour rating water draw test yields an inaccurate estimate of the performance of gas water heaters equipped with thermal compensating dip tubes,

(2) That the first hour rating water draw test does not reflect field conditions since the burner or heating elements are not permitted to operate during the test as would normally occur in the field,

(3) That the one hour time base of first hour rating overemphasizes the contribution of a water heater's recovery rate to the value determined, and

(4) That the temperature ratio adjustment in the calculation formula for first hour rating is arbitrary and capricious,

DOE finds that none of these conditions of the first hour rating test either prevent the testing of gas water heaters with thermal compensating dip tubes or evaluate them in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate data compared to that obtained testing water heaters with open end dip tubes.

With regard to the temperature drop criteria of 20° F, A. O. Smith contends that it has a major adverse impact on water heaters with thermal compensating dip tubes since outlet water temperature does not drop rapidly as water is withdrawn from a water heater with a thermal compensating dip tube. A. O. Smith also remarked that a consumer's main interest in sizing a water heater should be how much hot water can be withdrawn from a water heater before encountering cold water. Based on A. O. Smith's statements and test data, DOE assumes that A. O. Smith considers a 40° F temperature drop specification for the first hour rating water draw test to be more appropriate for its gas water heaters equipped with thermal compensating dip tubes. DOE finds merit in A. O. Smith's contentions but has not waived the first hour rating water draw test temperature drop specification of 20° F because to do so would alter the basis of the first hour rating measure for the water heaters in question and make comparisons on the basis of first hour rating between A. O. Smith gas water heaters with thermal compensating dip tubes and all other water heaters inappropriate. The importance of maintaining the credibility of the first hour rating measure, since it appears on the FTC EnergyGuide labels on water heaters and is used to specify the comparability ranges for water heaters, overrides waiving any requirement of the test in a manner which alters its basis.

The remaining assertions in the A. O. Smith petition are directed at the first hour rating measure in general and do not substantiate any problem with this test specifically as it applies to gas water heaters with thermal compensating dip tubes. Therefore, these assertions do not justify DOE's waiving any other requirements of the first hour rating test under the authority of 10 CFR 430.27.

In accordance with 10 CFR 430.27(h), DOE must publish in the Federal Register a notice of proposed rulemaking within one year from today to amend the test procedures for water heaters so as to eliminate any need for the continuation of the waiver granted to A. O. Smith today. As part of that rulemaking proceeding, DOE plans to solicit comments on the first hour rating test of the test procedures for water heaters. Specifically, DOE will be interested in obtaining comments on the temperature drop specification of the water draw test, the requirement for conducting the water draw test with no energy supply to the water heater, and the temperature ratio adjustment used in calculating first hour rating.

DOE considered the comments of State Industries, Inc. and Bradford-White Corporation in arriving at today's decision but finds that they do not refute A. O. Smith's assertions with substantive information or data. Bradford-White Corporation's request that any revision to the water heater test procedure be published for comment before being put into effect has not been honored since it is contrary to the provisions of the waiver process. Bradford-White Corporation and other

interested parties will have an opportunity to comment on the changes made to the test procedures for water heaters to apply to A. O. Smith's gas water heaters with thermal compensating dip tubes when DOE issues a notice of proposed rulemaking to amend the test procedures for water heaters to eliminate any need for the continuation of the waiver granted to A. O. Smith. Bradford-White Corporation's additional request that any revision to the test procedure for water heaters granted to A. O. Smith apply to any water heater equipped with a thermal compensating dip tubes has not been honored because DOE's authority to waive test procedure requirements extends only to the petitioner. However, Bradford-White Corporation or any other manufacturer of water heaters equipped with thermal compensating dip tubes may submit a waiver petition seeking similar relief from the test procedures for their water heaters equipped with thermal compensating dip tubes.

It is therefore ordered that:

(1) The Petition for Waiver filed by A. O. Smith Corporation is hereby granted, in part, as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix E of 10 CFR, Part 430, Subpart B, A. O. Smith Corporation shall be permitted to test its gas water heaters which are equipped with thermal compensating dip tube water inlet devices known as model numbers PGC −30, −40, −50, and −65 on the basis of the test procedures specified in 10 CFR, Part 430, with the modifications set forth below:

(a) The first hour rating water draw test shall be performed in accordance with section 3.7 with the exceptions that the maximum mean tank temperature shall be established in the range of 145° F ± 5° F and the water supply to the water heater inlet shall be maintained at a temperature in the range of 55° F ± 2° F.

(b) With the exception of the modifications set forth in subparagraph (a) above, A. O. Smith Corporation shall comply in all respects with the test procedures specified in Appendix E of 10 CFR, Part 430, Subpart B.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to the type of gas water heaters equipped with thermal compensating dip tubes manufactured by A. O. Smith Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant and commenters. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, D.C., November 9, 1982.

Joseph J. Tribble,

Assistant Secretary Conservation and Renewable Energy.

[FR Doc. 82-32654 Filed 11-29-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59104B; TSH-FRL No. 2254-2]

Reaction Product of Alkyl Isocyanate With 3-(Trimethoxysilyl)-1-Propanethiol; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM-83-2, an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: November 4, 1982.

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. M-2610, 401 M Street S.W., Washington, D.C. 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the application, and for the time period specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the application. All other conditions described in the application must be met. The following additional restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 82-53

Date of Receipt: October 6, 1982.

Notice of Receipt: October 22, 1982 (47 FR 47066).

Applicant: Confidential.

Chemical: Reaction product of alkyl isocyanate with 3-(trimethoxysilyl)-1-propanethiol.

Use: It will be used in assembly of automotive components. (Generic)

Production Volume: Confidential.

Exposure Information: There is a potential for dermal exposure to 5 workers for 3 days during manufacture and 18 workers for 54 days duration processing.

Test Marketing Period: 7 months.

Commencing on: (signature date).

Risk Assessment: EPA has established that the test marketing of the substance under conditions set out in the application will not present any unreasonable risk of injury to health or the environment because of low concerns for both health and environmental effects.

Public Comments: None.

The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: November 4, 1982.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 82-32707 Filed 11-29-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 8-781 et al., File Nos. BPCT-820319 KH]

Carlos Ortiz, et al.; Hearing Designation Order

In the matter of applications for construction permits of Carlos Ortiz Laredo, Texas (BC Docket No. 82-781, File No. BPCT-820319KH), K-RIO Broadcasting Company, Inc., Laredo,

Texas (BC Docket No. 82–782, File No. BPCT–820614KE) Tierra Del Sol Broadcasting Corporation, Laredo, Texas (BC Docket No. 82–783, File No. BPCT–820614KF) and Panorama Broadcasting Company, Laredo, Texas (BC Docket No. 82–784, File No. BPCT–82061 4KI).

Adopted: November 17, 1982.

Released: November 24, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Carlos Ortiz (Ortiz), K–RIO Broadcasting Company, Inc. (K–RIO), Tierra Del Sol Broadcasting Corporation (Tierra) and Panorama Broadcasting Company (Panorama) for authority to construct a new commercial television station on Channel 27, Laredo, Texas; motions to dismiss filed by Ortiz against each of the other applicants;[1] and related pleadings.

2. The materials submitted in the applications of Tierra [2] and Panorama [3] do not demonstrate the applicants' financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, each applicant will be given 30 days from the date of the release of this Order to revise its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If any applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378 (released July 15, 1982.)

Carlos Ortiz

3. The Federal Aviation Administration has no record of an existing tower at the location specified by Ortiz. Consequently, no determination has been reached that the tower height and location proposed by Ortiz would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by Ortiz indicates that there would be a significant difference in the size of the area and population that he proposes to serve and the size of the areas and populations that the other three applicants propose to serve. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of 64 dBu Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether comparative preferences should accrue to one or more of the applicants.

5. The Ortiz application was filed on March 19, 1982. In support of his showing as to his financial qualifications, Ortiz submitted, as part of his application, a copy of a letter, dated December 29, 1980, from Amvest Leasing and Capital Corp. (Amvest). The letter provided for financing of $99,000 of broadcasting equipment.

6. During the course of the processing of other Ortiz applications, it was discovered that copies of the same letter had been used in at least three other Ortiz applications,[4] apparently without the knowledge or consent of Amvest. Amvest, by Wayne C. Coates, its credit analyst, has submitted an affidavit, as requested by the Commission, stating that Amvest issued the letter only in connection with Ortiz's McAllen application.[5] By using the credit letter in at least three other applications (see footnote [5]) Ortiz has represented to the Commission that he has at least $396,000 available to him from Amvest, whereas in fact, only $99,000 is available. This conduct by Ortiz raises a question as to whether he has attempted to deceive or mislead the Commission and whether he has the requisite character qualifications to be a Commission licensee.[6] An appropriate issue will be specified as to Ortiz's basic qualifications.

7. Carlos Ortiz estimates that he will require $69,082 to construct the proposed facility and operate it for three months. To meet these expenses, Mr. Ortiz will rely on Amvest to finance $99,000 of broadcasting equipment and Mr. Ortiz states that he and his wife will use their assets to secure loans to cover any other expenses. There is no evidence of any loans except the one from Amvest.

8. Althouth financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. However, in light of the fact that Mr. Ortiz cannot rely on the Amvest letter of December 29, 1980, as part of his financial plan for this facility, since it was issued in connection with his McAllen, Texas application (See paragraph 6, supra), Mr. Ortiz will be required to show that he is financially qualified to construct and operate as proposed. Accordingly, an issue will be specified to determine whether Mr. Ortiz has any funds available.

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, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Carlos Ortiz:

(a) Whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

(b) All of the facts and circumstances surrounding the filing of the letter of credit from Amvest Leasing and Capital Corp.;

(c) Whether the applicant attempted to deceive or mislead the Commission or was lacking in candor or make misrepresentations to the Commission;

[1] Ortiz's motions are, in essence, pre-designation petitions to specify issues. Such peitions are no longer permitted; therefore, they will be dismissed. *Processing of Contested Broadcasting Applications*, 72 F.C.C. 2d 202 (1979).

[2] Tierra seeks to incorporate by reference the balance sheet which it filed in connection with its application for a construction permit for a new television station in Kerrville, Texas (*Comanche Broadcasting, Inc.*, BC Docket No. 82–608, released September 3, 1982), but a question was raised in that proceeding as to Tierra's financial qualifications. Consequently, in the absence of a current balance sheet, Tierra cannot rely on the balance sheet filed in the Kerrville application to establish its financial qualifications.

[3] Panorama's application states that the applicant cannot certify that it is financially qualified.

[4] BPCT–820312KE, Channel 52, Carolina, Puerto Rico; BPCT–820415KF, Channel 16, Mayaguez, Puerto Rico, D82–651. BPCT–811229KF, Channel 48, McAllen, Texas.

[5] It appears that Ortiz used the original Amvest letter in connection with his McAllen application, as he was entitled to do, and that he apparently used unauthorized copies in this application (Laredo) and in his Mayaguez and Carolina applications. Thus, there appears to have been a proper use of the letter in one application and an improper use in three.

[6] Ortiz's application for Mayaguez, Puerto Rico (BPCT–820312KE) was designated for hearing in Docket No. 82–651 prior to the discovery of this problem. Therefore, no character qualifications issue was raised in that designation order.

(d) Whether, in light of the evidence adduced pursuant to the foregoing issues, the applicant has the requisite qualifications to be a commission licensee.

(e) Whether, applicant has any funds available to construct and operate as proposed;

(f) Whether, in light of the evidence adduced pursuant to issue (e), applicant is financially qualified.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, that Tierra Del Sol Broadcasting Corporation and Panorama Broadcasting Company shall each submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1 (a).

13. It is further ordered, that the motions to dismiss filed by Carlos Ortiz against K-RIO Broadcasting Company, Inc., Tierra Del Sol broadcasting Corporation and Panorama Broadcasting Company are dismissed.

14. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent 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.

15. 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 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, 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. 82-32650 File 11-29-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Council Meeting; Change in Agenda

Reference **Federal Register**, dated November 1, 1982, Vol. 47, No. 211, page 49468, Notice of Meeting for the Federal Savings and Loan Advisory Council on Monday, December 6, Tuesday, December 7, and Wednesday, December 8, 1982.

On Monday, December 6, the opening of the Council Meeting and review subcommittee assignments will start at 9:30 a.m. instead of 10:00 a.m.

The Monday Morning meeting will be held in the Amphitheater, 2nd Floor, instead of the Bank Board Conference Room, Sixth Floor.

Richard T. Pratt,

Chairman.

[FR Doc. 82-32646 Filed 11-29-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Fedral 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, NW., Room 10327; or may inspect the agreements at the Field Offices located at New Nork, 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 within 20 days after the date of the **Federal Register** in which this notice appears. 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, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United 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.: 6400-21.

Filing Party: F. Conger Fawcett, Esq., Graham & James, One Maritime Plaza, Third Floor, San Francisco, California 94111.

Summary: Agreement No. 6400-21 modifies the organic agreement of the Pacific Coast River Plate Brazil Conference for the purpose of expressly authorizing the conference members to act by telephone poll in lieu of sectional meetings.

Agreement No.: 9548-25.

Filing Party: Marc J. Fink, Esq., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agrement No. 9548-25 modifies the basic agreement of the North Atlantic Mediterranean Freight Conference to clarify existing language.

Agreement Nos.: 10122-6, 7, 8, 9, 10 and 11.

Filing Party: Jorge Luis Wachter, Executive Administrator, Inter-American Freight Conference, Lavalle 381-8 Piso (1047), Buenos Aires, Argentina.

Summary: Agreement Nos. 10122-6 thru 11 would amend the Inter-American Freight Conference, Area River Plate/Pto. Rico and U.S. Virgin Is./River Plate basic agreement to: (1) Provide that the parties may agree upon and establish uniform credit rules and policies; (2) establish procedures for the submission of tonnage reports and the payment of amounts due for noncompliance with said procedures; (3) enlarge the responsibilities of the Executive Administrator and add authority for principals to meet as a committee and act upon matters by agreement of 2/3 vote; (4) permit the Executive Administrator or his assistant to execute and file agreement amendments with the governmental authorities having jurisdiction; (5) increase the security deposit to $50,000; and (6) provide that the member lines or its agents are prohibited from acting as an agent for any non-conference carrier in the trade covered by the conference.

Agreement No.: 10462.

Filing Party: Mr. Ray Finnan, Chief Tariff Publishing Officer, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

Summary: Agreement No. 10462 is an exclusive general agency agreement between Lykes Bros. Steamship Co., Inc. (Lykes) and Tampa Bay Steamship Agency, Inc. (Tampa Bay), whereby Tampa Bay will perform all acts and functions customarily performed by steamship agents for and on behalf of

Lykes in the ports of Tampa, Port Manatee and St. Petersburg, Florida, Lykes will compensate Tampa Bay according to a mutually agreed fee schedule. The term of the agreement is without fixed limit.

Dated: November 24, 1982.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-32683 Filed 11-29-82; 8:45 am]

BILLING CODE 6730-01-M

Sacramento-Yolo Port District and Cargill of California, Inc.; Cancellation

Agreement No.: T-21-9.

Filing Party: Mr. Ronald L. Laumbach, Assistant General Counsel, Cargill Incorporated Law Department, P.O. Box 9300. Minneapolis, Minnesota 55440.

Sumary: On November 8, 1982, the Commission received notice of the termination of Agreement No. T-21-9 by the signatory parties thereto, Sacramento-Yolo Port District and Cargill of California, Inc. The agreement will be cancelled effective September 30, 1982, the date specified by the parties.

Dated: November 24, 1982.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-32684 Filed 11-29-82; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Export Transports, Inc., 27590 N. Forest Garden Road, Wauconda, IL 60084, Officers: Karin Hildebrandt, Secretary/Treasurer, Dieter Hildebrandt, President;

Spatzer International Inc., 11 John Street, New York, NY 10038, Officers: Harold Spatzer, Pres./Treas./ Assistant Secretary, Roberta Spatzer, Secretary;

Maria A. White, d.b.a. A-1 Forwarding Company, c/o 418 E. Carrell Street, #19, Tomball, TX 77375

Dated: November 24, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-32685 Filed 11-29-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 949-R]

J. K. Ebberwein, Inc.; Order of Revocation

On November 18, 1982, J. K. Ebberwein, Inc., 12 Gillon Street, Charleston, S.C. 29402 surrendered its Independent Ocean Freight Forwarder License No. 949-R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 949-R issued to J. K. Ebberwein, Inc. be revoked effective November 18, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon J. K. Ebberwein, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-32686 Filed 11-29-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

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 Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Bancorp of War, Inc.*, War, West Virginia; to acquire 100 percent of the voting shares of Ameribank, Welch, West Virginia. Comments on this application must be received not later than December 23, 1982.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Eagle Bancorporation, Inc.*, Highland, Illinois; to acquire 51.0 percent of the voting shares or assets of Sparta State Bank, Sparta, Illinois. Comments on this application must be received not later than December 23, 1982.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400b Sansome Street, San Francisco, California 94120:

1. *First Interstate Bancorp*, Los Angeles, California; to acquire 100 percent of the voting shares or assets of First Interstate Bancard Company, N.A., Simi Valley, California. Comments on this application must be received not later than December 23, 1982.

Board of Governors of the Federal Reserve System, November 23, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32600 Filed 11-29-82; 8:45 am]

BILLING CODE 6210-01-M

Eagle Bancorporation, Inc.; Acquisition of Bank

Eagle Bancorporation, Inc., Highland, Illinois, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Time Associates Inc., Nashville, Illinois, and thereby indirectly acquire 97.18 percent of the voting shares of The First National Bank of Nashville, Nashville, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 23, 1982. 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.

Board of Governors of the Federal Reserve System, November 23, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32599 Filed 11-29-82; 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 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 Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants and Manufacturers Bancorporation, Inc.*, Milwaukee, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Lincoln State Bank, Milwaukee, Wisconsin, and Franklin State Bank, Franklin, Wisconsin. Comments on this application must be received not later than December 21, 1982.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hanisch Bankshares, Ltd.*, Crosby, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers State Bank of Crosby, Crosby, North Dakota. Comments on this application must be received not later than December 21, 1982.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri:

1. *Bancshares of Glasgow, Inc.*, Glasgow, Missouri; to become a bank holding company by acquiring 96.8 percent of the voting shares of Tri-County Trust Company, Glasgow, Missouri. Comments on this application must be received not later than December 21, 1982.

2. *Kaw Valley Bancshares, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 88.42 percent of the voting shares and 99.80 percent of the convertible debentures of Kaw Valley State Bank and Trust, Kansas City, Kansas. Comments on this application must be received not later than December 23, 1982.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Community Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 85.078 percent of the voting shares of the First National Bank of Killeen, Killeen, Texas; 80.027 percent of the voting shares of Fort Hood National Bank, Fort Hood, Texas; and 96.45 percent of the voting shares of American Bank, Conroe, Texas. Comments on this application must be received not later than December 23, 1982.

2. *First Dumas Banchares, Inc.*, Dumas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Dumas, Dumas, Texas. Comments on this application must be received not later than December 23, 1982.

E. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *First Commerce Bancorp. Inc.*, Eubank, Kentucky; to become a bank holding company by acquiring 80 percent or more of the voting shares of The First State Bank, Eubank, Kentucky. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Comments on this application must be received not later than December 23, 1982.

Board of Governors of the Federal Reserve System, November 23, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-32601 Filed 11-29-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 10-11, 1983, Building 31, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20205, phone (301) 496-5421, will furnish substantive program information upon request.

(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. 82-32648 Filed 11-29-82; 8:45 am]

BILLING CODE 4140-01-M

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, January 18-19, 1983. The meeting will be held at the Federal Building, 7550 Wisconsin Avenue, Conference Room B119, Bethesda, Maryland 20205.

This meeting will be open to the public 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.

(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.

Dated: November 17, 1982.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 82–32649 Filed 11–29–82; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board Subcommittee on Program Project Grants; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Program Project Grants, National Cancer Institute, December 17, 1982, Brown Palace Hotel, Denver, Colorado. The meeting will be open to the public on December 17, from 9:00 a.m. to adjournment to discuss the peer review sytem of program project grant applications. 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.

Dr. William Walter, Executive Secretary, Subcommittee on Program Project Grants, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, Room 10A03, Bethesda, Maryland 20205, (301) 496–4218, will furnish substantive program information.

Dated: November 18, 1982.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82–32647 Filed 11–29–82; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–1280]

Nevada; Public Lands Classification Vacated

1. Pursuant to the authority delegated by Bureau Order 701 and amendments thereto, the Bureau of Land Managment multiple use classification N–1280 was publish in the **Federal Register** on June 27, 1968 (FR Doc 68–7621). Pursuant to the Classification and Multiple Use Act of September 19, 1964, 43 U.S.C. 1411–18) and the 43 CFR Part 2460 regulations, this action classified approximately 2,648,400 acres of public land in Washoe County, Nevada, for multiple use management. The land was segregated from appropriation under the agricultural land laws and Section 2455 of the Revised Statues. Two areas were further segregated from all forms of appropriation including the mining laws, but not the Recreation and Public Purposes Act (44 Stat. 741) as amended, nor the mineral leasing and material sale laws. A third area was segregated only from appropriation under all the public land laws.

2. The classification is hereby modified to open the following described land to the operation of all the public land laws, but not the mining laws.

Mount Diablo Meridian, Nevada

T. 20 N., R. 19E.,
Sec. 22, N½SE¼SE¼, SW¼SE¼, NW¼SE¼NW¼, NE¼SW¼NW¼, E½NW¼SW¼NW¼;
Sec. 24, lots 1, 4, 5, 6, 7, 8, W½E½, E½SW¼;
Sec. 25, lots 1, 2, 3, 4, 5, 6, 7, 11, SW¼NE¼, NW¼SE¼, NE¼SW¼, SE¼NW¼;
Sec. 27, lot 3, NE¼NE¼, W½NE¼SE¼NE¼, E½NE¼NW¼NE¼, S½SW¼, NW¼SW¼, S½NW¼NE¼NW¼, S½NW¼SW¼NW¼, S½NE¼NW¼NW¼, S½NW¼NW¼.
T. 20 N., R. 20 E.,
Sec. 20, E½, E½SW¼;
Sec. 21, S½SW¼, NW¼SW¼;
Sec. 28, SW¼NE¼, SE¼, N½SW¼, SW¼SW¼, NW¼;
Sec. 29, E½, E½SW¼, NW¼SW¼, NW¼;
Sec. 30, lots 1, 2, 3, SW¼NE¼SE¼, E½NW¼NE¼SE¼.

The area described above comprises approximately 2,980.53 acres.

3. Pursuant to 43 CFR 2461.5(c)(2), the remaining land in the classification is hereby vacated with the exception of the following described land.

Mount Diablo Meridian, Nevada

T. 38 N., R. 23 E.,
Sec. 21, SE¼;
Sec. 22, W½SW¼;
Sec. 27, NW¼NW¼;
Sec. 28, N½NE¼ (George Lund Petrified Forest).

The area described above comprises approximately 360 acres.

This area has high potential recreational value and will remain classified for a period of 5 years from the date of this publication at which time the classification will again be reviewed. The land will remain open to the Recreation and Public Purposes Act but will be segregated from all other forms of appropriation, including the general mining laws.

4. At 9:00 a.m. on December 30, 1982, all the land except that described in paragraph 3 above is hereby open to the operation of all the public land laws, subject to valid existing rights.

5. At 9:00 a.m. on December 30, 1982, the following described land will also be open to the operation of the mining laws.

Mount Diablo Meridian, Nevada

T. 44 N., R. 18 E.,
Sec. 2, SE¼NE¼, E½SE¼;
Sec. 11, SE¼NE¼, E½SE¼ (New Year's Lake).
T. 36 N., R. 19 E.,
Sec. 2, lot 1.
T. 37 N., R. 19 E.,
Sec. 35, SE¼SE¼ (Duck Flat Petrified Forest).
T. 34 N., R. 23 E.,
Sec. 34, N½NW¼ (Granite Creek Petroglyphs).

This area comprises approximately 401.54 acres.

6. All the land described in the classification remains open to the mineral leasing and material sale laws.

7. All valid applications received prior to or at 9:00 a.m. on December 30, 1982 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

Inquiries concerning this land should be addressed to the Chief, Division of Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82–32689 Filed 11–29–82; 8:45 am]

BILLING CODE 4310–84–M

[N–35362]

Nevada; Realty Action; Noncompetitive Sale Public Lands in White Pine County, Nevada

November 19, 1982.

Mount Diablo Meridian

T. 13 N., R. 61 E.,
Sec. 9, NE¼NE¼SW¼SE¼SW¼, NW¼SE¼SE¼SW¼, NE¼SW¼SE¼SE¼SW¼, E½SE¼SE¼SW¼, E½SE¼NE¼SE¼SW¼.

The above described land, comprising 10 acres, is being offered as a direct sale to Carrie Baker at current fair market value.

The lands are being offered as a noncompetitive sale to Carrie Baker, the owner of the adjoining tract and improvements on the sale tract. Mr. Baker has constructed a large garage, a portion of which is located on the sale tract. He did this under the mistaken belief that the tract was part of his privately owned land. Disposal by direct sale to Mr. Baker will legalize his occupancy of the land, protect his equity investment in the improvements on the land, and resolve a complicated trespass situation.

The lands have not been used and are not required for any federal purpose. Disposal would best serve the public interest. The sale is consistent with the Bureau's planning system. The land will not be offered for sale for at least 60 days after the date of this notice.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for highway purposes which have been granted to the State of Nevada, Department of Highways, its successors or assigns, by permit No. CC–018286, under the Act of November 9, 1921, 42 Stat. 212.

2. Those rights for highway purposes which have been granted to the State of Nevada, Department of Highways, its successors or assigns by Permit No. Nev–05841, under the Act of August 27, 1958, 27 Stat. 885, 23 U.S.C. Sec. 107(d).

3. Those rights granted by oil and gas lease, N–10999, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the act of March 4, 1933, 47 Stat. 1570. The patent will be issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas lease, N–10999, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

Detailed information concerning the sale is available for review at the Nevada State Office, 300 Booth Street, Reno, Nevada.

For a period of 45 days, interested parties may submit comments to the State Director, (N–943), P.O. Box 12000, Reno, Nevada 89520.

Lacel E. Bland,

Acting Chief, Division of Operations.

[FR Doc. 82–32690 Filed 11–29–82; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Cendak, S. Dak.; Amendment to Notice of Intent To Prepare a Draft Environmental Statement

This amends the notice published in the **Federal Register** on November 2, 1982. The public meeting which was scheduled for November 9, 1982, has been rescheduled for December 14, 1982, at 9:00 a.m. at the King's Inn Hotel, 220 South Pierre Street, Pierre, South Dakota. The contact person is: Mr. Stan Gappa, Bureau of Reclamation, P.O. Box 2553, Billings, Montana 59103, telephone (406) 657–6519.

Dated: November 24, 1982.

Robert N. Broadbent,

Commissioner.

[FR Doc. 82–32661 Filed 11–29–82; 8:45 am]

BILLING CODE 4310–09–M

Lake Andes-Wagner, S. Dak.; Intent To Prepare a Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement for Lake Andes-Wagner, South Dakota. Alternatives for the Lake Andes-Wagner Unit have been investigated as part of the Plan Formulation Working Document for the Lower James-Fort Randall Water Diversion Proposal, October 1982. A 13,315-acre project and a 35,000-acre project were investigated. The 35,000-acre project was selected for futher study because it is economically feasible and is favored by the local people. The main plan features include the North Bay Pumping Plant, a main canal, distribution system, and a drainage system. The irrigable lands are located west and south of Lake Andes and the town of Lake Andes.

One option which will be evaluated in this study is the possibility of supplying water to Lake Andes. This water could be used for purposes such as fish and wildlife mitigation and/or enhancement, municipal water supply for the towns of Lake Andes and Wagner, and recreation development.

A Planning Report/Environmental Statement will be prepared by the end of fiscal year 1983.

There will be one meeting to solicit information from all interested public entities and persons to assist in determining the scope of the environmental statement and to identify the significant issues related to the proposed action. This meeting will be held on December 10, 1982, at 10 a.m. at the 4–H Building in Lake Andes, South Dakota.

The contact person for this environmental statement will be: Stan Gappa, Bureau of Reclamation, P.O. Box 2553, Billings, Montana 59103, telephone (406) 657–6519.

Dated: November 23, 1982.

R. N. Broadent,

Commissioner.

[FR Doc. 82–32642 Filed 11–29–82; 8:45 am]

BILLING CODE 4310–09–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 November 19, 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, D.C. 20243. Written comments should be submitted by December 15, 1982.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Colbert County

Tuscumbia, *Rather, John Daniel, House,* 209 S. Cave St.

Houston County

Columbia, *Purcell-Killingsworth House,* Main St.

Jefferson County

Birmingham, *First Presbyterian Church,* 2100 4th Ave. N.

ARIZONA

Cochise County

Bowie, *Bear Spring House, Guardhouse, and Spring,* S of Bowie off Apache Pass Rd.

CONNECTICUT

Fairfield County

Bridgeport, *Barnum/Palliser Historic District*, Roughly bounded by Myrtle and Park Aves., Atlantic and Austin Sts. (both sides)

FLORIDA

Palm Beach County

Palm Beach, *US Post Office*, 95 N. County Rd.

INDIANA

Vigo County

Terre Haute, *Fire Station No. 9*, 1728 S. 8th St.

IOWA

Des Moines County

Burlington, *Heritage Hill Historic District*, Roughly bounded by Central Ave., High, 3rd, and Jefferson Sts.

KENTUCKY

Fayette County

Lexington, *Allen, James Lane, House*, 1020 Lane Allen Rd.

LOUISIANA

St. Landry County

Opelousas, *Old Federal Building*, 162 S. Court St.

MARYLAND

Baltimore (Independent City), *Butchers Hill Historic District*, Roughly bounded by Patterson Park Ave., Fayette, Pratt, Chapel, Washington, and Chester Sts.
Baltimore (Independent City), *Clifton School*, 2670 Kennedy Ave.
Baltimore (Independent City), *Marcus Building*, 30 S. Calvert St.

Baltimore County

Baldwin, Glen Arm, and Hydes, *Long Green Valley Historic District*, Glen Arm, Baldwin Mill, Manor, and Harford Rds. areas

Dorchester County

Cambridge, *Dorchester County Courthouse and Jail*, 206 High St.

Harford County

Bel Air, *Joshua's Meadows*, 300 N. Tollgate Rd.

Talbot County

Easton vicinity, *Wye Town Farm House*, NW of Easton on Bruff's Island Rd.

Washington County

Hagerstown, *Hagerstown Charity School*, 102 E. Washington St.

Wicomico County

Hebron vicinity, *St. Giles*, SW of Hebron on MD 347

MICHIGAN

Isabella County

Mt. Pleasant, *Michigan Condensed Milk Factory*, 320 W. Broadway St.

NEW YORK

Bronx County

New York City, *Eighth Regiment Armory*, 29 W. Kingsbridge Rd.

New York County

New York City, *New York School of Applied Design*, 160 Lexington Ave.
New York City, *Trinity Chapel Complex*, 15 W. 25th St.

Richmond County

New York City, *House at 5910 Amboy Road*, 5910 Amboy Road, 5910 Amboy Rd.

OHIO

Butler County

Oxford vicinity, *Austin-Magie Farm and Mill District*, N of Oxford at Four Mile Creek and Somerville Rd.

Huron County

Norwalk, *Dunton House*, 130 Benedict Ave.

Medina County

Medina, *King-Phillips-Deibel House*, 506 N. Broadway St.

Montgomery County

Dayton, *Central Avenue Historic District*, 201–338 Central Ave.
Dayton, *Mutual Home & Savings Association Building*, 120 W. 2nd St.
Huber Heights, *Miami-Erie Canal Lock No. 70*, Fishburg and Endicott Rds.

Muskingum County

Zanesville, *Arlington Hotel*, 722 Main St.
Zanesville, *Baltimore and Ohio Depot (Zanesville Historic Railroad Depots TR)*, Market St.
Zanesville, *Belt Line and New York Central Freight House (Zanesville Historic Railroad Depots TR)*, 3rd and Market Sts.
Zanesville, *Pittsburgh, Cincinnati, and St. Louis Depot (Zanesville Historic Railroad Depots TR)*, Market St.

Trumbull County

Girard, *Barnhisel, Henry II, House*, 1011 N. State St.

PENNSYLVANIA

Dauphin County

Harrisburg, *Senate Hotel*, 122 Market St.

TENNESSEE

Davidson County

Nashville, *Young Women's Christian Association Building*, 211 7th Ave. N.

Maury County

Columbia, *Mercer Hall*, 902 Mercer Court

Washington County

Jonesboro, *Hoss, Henry, House*, Blountville Rd.

TEXAS

El Paso County

El Paso, *Plaza Theatre*, 125 Pioneer Plaza

Tom Green County

San Angelo, *San Angelo National Bank Building*, 201 S. Chadbourne St.

Travis County

Austin, *Fischer House*, 1008 West Ave.

UTAH

Salt Lake County

Salt Lake City, *McAllister, James G., House*, 306 Douglas St.
South Jordan, *Garside-McMullin House*, 10481 S. 1300 West

Wayne County

Torrey vicinity, *Capitol Reef National Park Archeological and Historic MRA*, Torrey vicinity, *Fremont-Fruita Archeological Historic District (Capitol Reef National Park Archeological and Historic MRA)*, E of Torrey on UT 24

[FR Doc. 82-32552 Filed 11-29-82; 8:45 am]
BILLING CODE 4310-70-M

Office of the Secretary

Creation of Advisory Committee on Minerals Accountability

AGENCY: Interior Department.

ACTION: Notice to public of creation of Advisory Committee on Minerals Accountability.

SUMMARY: The Secretary of the Interior has determined that it is in the public interest to create an Advisory Committee on Minerals Accountability. The committee will be comprised of representatives of State governments, Indian tribes, the minerals industry, and the Federal Government. It will advise the Secretary on ways to carry out his policy of increased cooperation with States and Indian tribes in administering Federal and Indian mineral leases.

FOR FURTHER INFORMATION CONTACT: Robert E. Boldt, Associate Director for Royalty Management, Minerals Management Service, Main Interior, Room 4226, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone: (202) 343-3512.

SUPPLEMENTARY INFORMATION: The Department of the Interior is creating an Advisory Committee on Minerals Accountability. The committee will advise the Secretary, through the Minerals Management Board, on ways to carry out the Secretary's policy of increased cooperation with the States and Indian tribes in administering Federal and Indian mineral leases. Specifically, the committee will study, investigate, and recommend ways to implement the goals contained in Chapter Six, "States and Indian Tribes," of the Report of the Commission on Fiscal Accountability of the Nation's Energy Resources. The committee will work for a year and will prepare a written report to the Secretary setting its

findings and recommendations. The committee will be comprised of nine members. They will be appointed by the Secretary, as follows:

Three representing State governments,
Two representing Indian tribes,
One representing the Department of the Interior,
Two representing the minerals industry, and
One at large.

Certification

I hereby certify that the Advisory Committee on Minerals Accountability is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1457 and the Minerals Lands Leasing Act of 1920.

Dated: November 15, 1982.

James G. Watt,

Secretary of the Interior.

[FR Doc. 82-32606 Filed 11-29-82; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Decision Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

No. MC-FC-80127. By decision of November 9, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3, approved the transfer to Consumers Moving Co., Inc., of Cranston, RI, of Certificate No. MC-20969 Sub-No. 1 issued to June 28, 1982 to J. W. Miller Moving & Storage Co., Inc., of Providence, RI authorizing transportation of (1) *oyster*, from New Haven, CT to Warren RI, (2) *scrap metal*, from Providence, RI to Boston and Springfield, MA, (3) *painting contractors' supplies and materials*, between East Providence, RI, on the one hand, and, on the other, points in MA within 20 miles of East Providence, and (4) *household goods*, between East Providence, RI, on the one hand, and, on the other, points in MA, RI, CT, NY, and Philadelphia, PA, traversing NJ for operating convenience only.

Applicants Representative: Frederic A. Charleston, 1908 Industrial Bank Building, Providence, RI 02903.

Note.—No TA filed. Transferee is not a carrier. Gross income is under $2 million.

MC-FC-80128. By decision of November 5, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to FLEETWOOD TRANSPORTATION, INC., of Vineland, NJ, of numerous certificates and permits issued under MC-2860, issued to NATIONAL FREIGHT, INC., also of Vineland, NJ, which authorize the transportation of general commodities and specific commodities such as, but not limited to, glass and glass products, foodstuffs, building materials, plastic and plastic products, petroleum products and paper and paper products, between named points throughout the U.S. Representative: Peter J. Nickles, 1201 Pennsylvania Avenue, NW., Washington, DC 20044.

Notes.—Transferee is not a carrier but is affiliated with the transferor. The specific sub-numbers and scope of authority are to voluminous to set forth in this notice. However, it is fully set forth in the application which is on file at the Commission. The authority granted to National Freight, Inc., in MC-F-14084 is not at this time susceptible of transfer in this proceeding because no Certificate has been issued.

MC-FC-80135. By decision of November 12, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to American Auto Transport, Inc. of Certificates No. MC-133384 (Sub-No. 1), issued April 8, 1981; No. MC-133384 (Sub-No. 6) issued June 26, 1981; and No. MC-133384 (Sub-No. 7) issued September 23, 1982; and Permit No. MC-133384 (Sub-No. 5) issued October 28, 1981; to Barberton Recon Center, Inc., authorizing transportation as a common carrier over irregular routes, (1) of used automobiles, in secondary movements, in truckaway service between Barberton, OH, and points in 23 States and the District of Columbia and (2) transportation equipment between points in the United States; and as a contract carrier of transportation equipment for Model A and Model T Car Reproduction Corporation, of Battle Creek, MI between points in the United States. Representative: E. H. van Deusen, 2455 North Star Road, Columbus, OH 43221.

MC-FC-80137. By decision of November 9, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to F. P. CORP., of Omaha, NE, of Certificate No. MC-145743 (Sub-No. 21)X, issued to T.F.S., Inc., of Grand Island, NE which authorizes the transportation of (1) *food and related products*, between points in CA, on the one hand, and, on the other, points in ND, SD, NE, IA, MN, and WI, and (2) *such commodities* as are dealt in by grocery businesses, between Minneapolis, MN, on the one hand, and, on the other, points in Hall County, NE. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106.

Note.—Transferee is not a carrier. Because the transferor is selling and retaining duplicating authority, applicants have elected to submit evidence in support of the transaction under 49 U.S.C. 10922.

MC-FC-80152. By decision of November 8, 1982 issued under 49 U.S.C.

10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3, approved the transfer to Davidson Trucking Co., Inc., of Malden, MA, of Certificate No. MC–34454 (Sub-No. 3), issued to November 1, 1982 to Gormley Motor Transportation, Inc. of Medford, MA, authorizing transportation of *general commodities,* with exceptions, over irregular routes between points in specified NH Counties, and points in CT, MA, RI, NJ and NY. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA.

MC–FC–80162, filed October 22, 1982. By decision of November 9, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3, approved the transfer to HUBER BULK TRANSIT, INC. of Holmen, WI, Certificate No. MC–143174 issued to March 20, 1978 to KAPRI TRANSPORTATION CO. of Valley, NE authorizing the transportation of Coal (1) from Davenport, Iowa to points in MO, and IL, (2) from LaCrosse, Wisconsin to points in MN and IA and (3) from Winona, Minnesota to points in WI and ND, all with no transportation for compensation on return except as otherwise authorized. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402.

MC–FC–80169. By decision of November 12, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Falcon Transport of Poland, OH, of Certificate No. MC–148604 (Sub-No. 2) issued January 9, 1981, MC–148604 (Sub-No. 3) issued January 18, 1982, MC–148604 (Sub-No. 4) issued April 17, 1981, MC–148604 (Sub-No. 5 issued June 26, 1981, and Permit No. MC–146704 (Sub-No. 1) issued April 23, 1981, MC–146704 (Sub-No. 7) issued December 4, 1980, MC–146704 (Sub-No. 8) issued December 4, 1980, MC–146704 (Sub-No. 9) issued December 4, 1980, and MC–146704 (Sub-No. 10) issued May 21, 1981, and of Permit No. MC–148604 (Sub-No. 6)X issued May 1, 1981, to Falcon Motor Transport, Inc., of Akron OH, authorizing the transportation of (1) *plastic articles and such commodities* used in the floral industry between Kent, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK and TX, restricted to traffic originating at or destined to the facilities of the Smithers Company-Oasis Division; (2) *soap and cleaning compounds, fuel oil conditioners, ice control compounds, specialty cleaners and chemicals, automotive cleansers and waxes, fuel oil additives, and household deodorants and disinfectants* (except in bulk), between those points in the U.S. east of ND, SD, WY, CO, and NM, restricted to traffic originating at or destined to the facilities of Malco Products, Inc.; (3) *containers, container ends, and closures* and *commodities* manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers, between points in Cuyahoga, Stark, and Summit Counties, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX; (4) *malt beverages and wine,* between specified counties in OH, on the one hand, and, on the other, points in IL, MI, NJ, NY, NC and WI; (5)(a) *such commodities* as are manufactured, processed and/or dealt in by rubber manufacturers and steel product manufacturers, and equipment, materials, and supplies used in the conduct of such businesses; (b) *such commodities* as are manufactured, processed and/or dealt in by textile mill products and manufacturers; (c) *such commodities* as are manufactured, processed and/or dealt in by chemicals and related products manufacturers; and (d) *scrap tires and tubes,* between points in the U.S. under continuing contracts with shippers; (6) (1) *building materials;* and (2) *materials, equipment and supplies* used in the manufacture of building materials (except in bulk), between Lodi, OH, and Franklin Park, IL, on the one hand, and, on the other, points in WV, VA, MD, DE, PA, NY, NJ, MA, CT, RI, VT, NH, ME, MI, IN, OH, and DC, under continuing contract(s) with Questor Corporation, of Toledo, OH; (7) *such commodities* as are dealt in or used by manufacturers and processors of rubber and steel products, between Akron, OH, on the one hand, and, on the other, those points in NJ south of NJ Hwy 33, those points in NY west of a line beginning at Port Jervis, NY, and extending along U.S. Hwy 209 to Kingston, NY, then along US Hwy 9–W to Albany, NY then along US Hwy 20 to Syracuse, NY, then along US Hwy 11 to Watertown, NY, and then along NY Hwy 12 to Clayton, NY, and points in IL, MD, MI, and WI under continuing contract(s) with General Tire and Rubber, of Akron, OH; (8) *non-woven fabric,* from points in NY, PA, and DE to Cleveland, OH, under continuing contract(s) with Cleveland Cotton Products, Inc., of Cleveland OH; (9) (a) *building materials and supplies* (except in bulk); (b) *such commodities* as are dealt in by retail department and discount stores (except in bulk); and (c) *fixtures, materials, equipment and supplies* used in the conduct of such business as named in (b) above (except in bulk), between the facilities of Forest City Enterprises, Inc., and points in the U.S. east of ND, SD, WY, CO, and NM; and (10)(a) *such commodities* as are manufactured, processed and/or dealt in by rubber manufacturers and steel product manufacturers, from Akron, OH to points in RI, MA, CT, and parts of NY and NJ; (b) *tire fabric,* from Fall River and New Bedford, MA to Akron, OH; and (c) *chemicals,* from Naugatuck, CT to Akron, OH, under continuing contract(s) with shippers. Representative: Michael Spurlock, Attorney, 275 East State Street, Columbus, OH 43215. Phone 614–228–8575. TA lease has been filed. Transferee is not a carrier.

MC–FC–80179. By decision of November 12, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3, approved the transfer to Terry C. Baker, An Individual, DBA Midland West Trucking, of Lewiston, ID, of a portion of Certificate No. MC–138875 (Sub-No. 312) issued to Shoemaker Trucking Company (Loren Wetzel, Trustee in Bankruptcy), of Boise, ID. The portion to be transferred is contained in paragraph 46(b) and auhtorizes the transportation of *textile mill products,* between points in MN, on the one hand, and, on the other, points in ID, MT, OR, UT, WA and WY. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701.

Note.—Transferee is not a carrier.

MC–FC–80185. By decision of November 9, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board No. 3 approved the transfer to RAM DISTRIBUTING, INC., Columbus, OH, of Certificate No. MC–153411 and MC–153411 (Sub-No. 1) issued to ALLRED TRUCKING CO., INC., and ALLRED TRUCKING COMPANY, Columbus, OH, respectively authorizing (1) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Franklin County, OH, on the one hand, and, on the other, points in the U.S., and (2) *general commodities* (except explosives) between the facilities used by Ralston-Purina Company and its subsidiaries at points in the U.S., on the one hand, and, on the other, points in the U.S. TA lease is not sought. Transferee is not a carrier. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215.

[FR Doc. 82–32631 Filed 11–29–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers, Permanent Authority Decisions; Decision-Notice

The following applications, are governed by 49 CFR 1160.1–1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** on December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 3, 1982. 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 1160.40–1160.49. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request 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 become 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 duplicte an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2. Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team 3 (202) 275–5223.

Volume No. OP3–27

Decided: November 22, 1982.

MC 161844 (Sub-1), filed November 8, 1982. Applicant: J.T. DUNN & ASSOCIATES, INC., 3536 So. 1950 W, Salt Lake City, UT 84119. Representative: Harvey Dunn (same address as applicant), (801) 973–8510. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164524, filed November 2, 1982. Applicant: BRADLEY W. WALLACE, SR., P.O. Box 115, Willow Springs, IL 60480. Representative: James S. Goode, 2055 Castle Dr., Edwardsville, IL 62025, (618) 656–1597. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 164615, filed November 11, 1982. Applicant: NS TRANSPORTATION BROKERAGE CORPORATION, One Commercial Place, P.O. Box 3609, Norfolk, VA 23514–3609. Representative: David J. Kaufman, 920 15th Street, N.W., Washington, DC 20005, (202) 383–4261. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 164655, filed November 8, 1982. Applicant: HIGHWAY MARKETING & SALES, INC., 4868 Highway 42, Suite E, Ellenwood, GA 30049. Representative: Kim G. Meyer, P.O. Box 56282, Atlanta, GA 30303, (404) 523–1717. As a *broker* of *general commodities* (except household goods), between points in the U.S.

For the following, please direct status calls to Team 4 (202) 275–7669.

Volume No. OP4–037

Decided: November 23, 1982.

MC 164446, filed October 27, 1982. Applicant: SUNSHINE EQUIPMENT RENTALS, INC., 3001 N. Hiway 301, P.O. Box 1202, Dade City, FL 33525. Representative: Frank Yager (same address as applicant), (904) 567–4458. Transporting (1) *food and other edible products and byproducts intended for human consumption*, (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI), and (2) *general commodities*, between Clearwater and Jungle, FL, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate under part (2) of the authority sought to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423.

Volume No. OP4–039

Decided: November 23, 1982.

MC 154436 (Sub-5), filed November 2, 1982. Applicant: MARILYN THOMAS, d.b.a. MAT TRUCKING, 2604 W. Pleasant Ridge Rd., Arlington, TX 76016. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI), and (2) *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 164556, filed November 3, 1982. Applicant: MICHAEL SHANE PLOURDE, 55 Columbia St., Portsmouth, NH 05801. Representative: Michael Shane Plourde (same address as applicant), (603) 383–9661. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

[FR Doc. 82-32630 Filed 11-29-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications are governed by 49 CFR 1160.1–1160.23 of the Commission's Rules of Practice. These rules were published in the **Federal Register** of December 31, 1980, at 45 FR 86771 and redesignated at 47 FR 49583, November 1, 1982. 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 1160.40–1160.49. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request 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 carier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for more contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 1, (202)275–7992.

Volume No. OP1–207

Decided: November 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 941 (Sub-10), filed November 12, 1982. Applicant: McCRACKEN MOTOR FREIGHT, INC., 2120 West 7th Place, Eugene, OR 97402. Representative: Curtis E. McCracken, 3147 N. W. Front, Portland, OR 97210, (503) 226–6959. Transporting *general commodities* (except classes A and B explosives household goods and commodities in bulk), between points in AZ, CA, ID, NV, OR and WA.

MC–118811 (Sub-22), filed November 8, 1982. Applicant: LAWRENCE McKENZIE TRUCKING SERVICE, INC., P.O. Box 135, Winchester, KY 40391. Representative: Harry Ross, Jr., 58 S. Main St., Winchester, KY 40391, (606) 744–3503. Transporting *such commodities* as are dealt in or used by manufacturers of lumber and wood products and building materials, between points in TX, OK, KS, LA, AR, MO, MI, IL, IN, OH, PA, MD, VA, WV, KY, TN, NC, SC, GA, FL, AL, MS, IA, NE, WI, and DC.

MC–128741 (Sub-13), filed November 1982. Applicant: HANCOCK VAN LINES, INC., 6020 Galley Road, Colorado Springs, CO 80915. Representative: Rex E. Lang (same address as applicant), (303) 596–8050. Transporting *houshold goods and furniture and fixtures,* between points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY, and DC.

MC–143621 (Sub-59), filed November 10, 1982. Applicant: TENNESSEE STEEL HAULERS, INC., P.O. Box 100991, Nashville, TN 37210. Representative: Kim D. Mann, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20814, (301) 986–1410. Transporting *metal products, building materials, and such commodities which because of size or weight require the use of special equipment,* between those points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343 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 1, Room 6358.

MC–144341 (Sub-1), filed November 12, 1982. Applicant: DONALD W. HARMON Route O2, Box 92, Orlando, OK 73073. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Blvd., Oklahoma City, OK 73118, (405) 848–7946. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in Noble County, OK, on the one hand, and, on the other, points in Oklahoma County, OK.

MC–145021 (Sub-2), filed November 9, 1982. Applicant: EISENMAN TRANSPORT, INC., 312 E. 16th Street, Greeley, CO 80631. Repesentative: Jack B. Wolfe, 601 E. 18th Ave., Suite 107, Denver, CO 80203, (303) 861–8046. Transporting *metal products and building materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with American Metals Corporation, of Commerce City, CO.

MC 148791 (Sub-35), filed November 12, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *beverages, beverage preparations and beverage containers and related products and materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Shasta Beverage Corp., of Hayward, CA.

MC 154971 (Sub-2), filed November 9, 1982. Applicant: JERRY HAMMANN TRANSPORTATION, INC., P.O. Box 86, Cohasset MN 55721. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *Composition board,* between points in the U.S. (except AK and HI), under continuing contract(s)

with Blandin Wood Products Co., of Grand Rapids, MN.

MC 156361 (Sub-6), filed November 9, 1982. Applicant: BIGBEE TRANSPORTATION COMPANY, a corporation, American Lane, P.O. Box 3610, Greenwich, CT 06836–3610. Representative: Raymond L. Pucci (same address as applicant), (203) 552–3513. 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 SCM Corporation, of Cleveland, OH.

MC 158511 (Sub-4), filed November 12, 1982. Applicant: WISCONSIN GENERAL CARTAGE & WAREHOUSE, INC., 4080 North Port Washington, Milwaukee, WI 53212. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719, (608) 273–1003. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in WI, on the one hand, and, on the other, points in IA, IL, IN, KY, MI, MN, MO, and OH.

MC 159960, filed November 12, 1982. Applicant: ARIES TRUCKING, INC., 4508 W. 59th Street, Tulsa, OK 74107. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3301. Transporting *metal products and machinery*, between points in the U.S. (except AK and HI).

MC 163511, filed November 12, 1982. Applicant: WATSON TRUCKING SERVICE, INC., P.O. Drawer 1425, Brandon, FL 33511. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6000. Transporting *general commodities* (except classes A and B explosives), between points in FL.

MC 164501, filed November 12, 1982. Applicant: L.C.I. FREIGHT, INC., 89 West Lake Drive, Troy, IL 62294. Representative: John D. Geldbach II (same address as applicant), (618) 667–6070 or 3401. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between St. Louis, MO and points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 3 at 202–275–5223.

Volume No. OP3–28

Decided: November 23, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 111625 (Sub-30), filed November 8, 1982. Applicant: BERMAN'S MOTOR EXPRESS, INC., P.O. Box 1566, Binghamton, NY 13902. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MA, CT, RI, NY, PA, ME, NH and VT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142204 Sub 16, filed November 8, 1982. Applicant: GUNVILLE TRUCKING, INC., d.b.a. GUNVILLE TRUCKING, P.O. Box 77, Niagara, WI 54151. Representative: Michael S. Varda, 121 South Pinckney St., Madison, WI 53701, (608) 255–8891. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Iron, Delta, Dickinson, Marquette, and Menominee Counties, MI, and Forest, Florence, Marinette, Oconto, and Brown Counties, WI, on the one hand, and, on the other, points in IA, IL, IN, KS, KY MI, MN, MO, NE, ND, OH, SD, and WI.

MC 148994 (Sub-4), filed November 8, 1982. Applicant: MICHAEL W. AMABILE, d.b.a. TRIPLE AAA TRUCKING, 29891 Red Arrow Highway, Paw Paw, MI 49079. Representative: Nancy J. Amabile (same address as applicant), (616) 657–3400. Transporting *metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Hastings Aluminum Products, Inc., Division of National Aluminum, subsidiary of National Steel, of Hastings, MI.

MC 150065 (Sub-2), filed November 9, 1982. Applicant: PINNER CARPETS, INC., d.b.a. PINNER TRANSPORTATION, 800 East Eight Street, Odessa, TX 79761. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112, (817) 457–0804. Transporting *floor covering*, between points in GA, on the one hand, and, on the other, points in TX, OK, and NM.

MC 156274 (Sub-3), filed November 8, 1982. Applicant: IOWA MEAT DISTRIBUTING CO., INC., P.O. Box 36, Hope Hull, AL 36043. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104, (205) 262–2756. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI).

MC 159075 (Sub-3), filed November 8, 1982. Applicant: WILLIAM P. JONES, d.b.a. JONES BROS. TRUCKING, 1895 E. Broadway, P.O. Box 4414, Missoula, MT 59806. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *iron and steel articles*, (1) between Chicago, IL, and points in Grayson County, TX, Peoria, Woodford, and Tazwell Counties, IL, and Santa Clara and Alameda Counties, CA, on the one hand, and, on the other, points in the U.S. (except AZ, CA, ID, IL, MT, MN, NE, ND, OR, PA, SD, TX, WA, WY, AK, and HI), and (2) between points in Pettis County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160195 (Sub-2), filed November 8, 1982. Applicant: SAN RAFAEL TRUCK LINE, 1625 N. 26th Ave., Phoenix AZ 85009. Representative: Kinley T. Gleave, P.O. Box 3916, Phoenix, AZ 85030, (602) 233–0565. Transporting *such commodities* as are dealt in or used by grocery and food houses, between points in AZ, on the one hand, and, on the other, points in CA, OR, and WA.

MC 160875, filed November 8, 1982. Applicant: WEST SIDE GRAIN & SALVAGE, INC., 86 Main Ave., Atkins, IA 52206. Representative: Richard P. Moore, 2720 First Ave., NE., P.O. Box 1943, Cedar Rapids, IA 52406, (319) 366–7331. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contracts with (1) Archer Daniels Midland Co., of Decatur, IL, (2) Cargill, Incorporated, of Minneapolis, MN, (3) Penick & Ford, Limited, of Cedar Rapids, IA, and (4) Ralston Purina Company, of St. Louis, MO.

MC 163395, filed November 8, 1982. Applicant: David A. McFARLAND, d.b.a BLACK HAWK TRANSPORT, Hereford Route, Box 46, Sturgis, SD 57785. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701, (605) 343–4036. Transporting *lumber and wood products*, and *metal products*, between points in the U.S. (except AK and HI).

MC 164654, filed November 8, 1982. Applicant: HOCKERSMITH & SONS, INC., P.O. Box 1740, Richmond, IN 47374. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IN and OH, on the one hand, and, on the other, points in NY, IL, WV, KY, MI, PA, OH, IN, and VA.

MC 164614, filed November 8, 1982. Applicant: S & S PRODUCE CO., INC., Farmers Market, Greenville, SC 29609. Representative: Mitchell King, Jr., P.O. Box 5711, Greenvill, SC 29606, (803) 288–6000. 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 Bi-Lo, Inc. of Mauldin, SC, Fisher Cheese Company of Wapakoneta, OH and Gentile Bros. Company of Cincinnati, OH.

For the following, please direct status calls to Team 4 (202) 275–7669.

Volume No. OP4–038

Decided: November 23, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 82507 (Sub-10), filed November 9, 1982. Applicant: STEMM TRANSFER & STORAGE, INC., P.O. Box 297, St. Cloud, MN 56301. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transportating *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 105886 (Sub-38), filed November 8, 1982. Applicant: MARTIN TRUCKING, INC., East Poland Ave., Bessemer, PA 16112. Representative: Henry M. Wick, Jr., Two Chathan Center, Suite 1610, Pittsburgh, PA 15219, (412) 765–1600. Transportating *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with ASI Construction, Inc., ASI Reactivation, Inc., and Adsorption Systems, Inc., all of Millburn, NJ.

MC 129467 (Sub-3), filed November 8, 1982. Applicant: B–N, INC., 705 N. Topeka, El Dorado, KS 67042. Representative: Randall E. Burnett (same address as applicant), (316) 321–4541. Transporting *petroleum, natural gas and their products,* between points in KS, MO, NE and OK.

MC 142747 (Sub-4), filed November 12, 1982. Applicant: TATECO, INC., No. 1 Cheddar Lane, Valley City, IL 62340. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Juici-Rich Products, Inc., of Springfield, IL, and Bergman Meat Packing Company, Inc., of Pittsfield, IL.

MC 145457 (Sub-14), filed November 9, 1982. Applicant: B & M EXPRESS, INC., 1800 S. Portland, P.O. Box 82506, Oklahoma City, OK 73108. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3304. Transporting *such commodities* as are dealt in by retail and discount stores, between points in NE, on the one hand, and, on the other, points in AL, AR, CO, GA, KS, LA, OK, MO, MS, TN, and TX.

MC 152366 (Sub-3), filed November 10, 1982. Applicant: AMERICAN COLLOID CARRIER CORP., P.O. Box 951, Scottsbluff, NE 69361. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202–3357, (303) 892–6700. Transporting *metal and metal products,* between points in the U.S. (except AK and HI).

MC 152337 (Sub-6), filed November 12, 1982. Applicant: CENTRAL STATES TRUCKING CO., 5101 South Lawndale Ave., P.O. Box 450, Summit, IL 60603. Representative: Edward G. Bazelon, 135 South LaSalle St., Chicago, IL 60603, (312) 236–9375. 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 United States Gypsum Company, of Chicago, IL and its subsidiaries, A. P. Green Refractories Co. (Delaware), of Mexico, MO; The E. J. Bartells Company, of Renton, WA; Bigelow-Liptak Corporation, of Southfield, MI, Bigelow-Lipak Export Corporation, of Houston, TX; A. Lynn Thomas Company Incorporated, of Richmond, VA; Durabond Products Company, and Permalastic Products Incorporated, both of Rosemont, IL; Castlegate Industries, Inc., and Arch Partitions, Inc., both of Downers Grove, IL; North Bay Building Materials Co., of Vallejo, CA; Sequoyah Carpet Corporation, of Anadarko, OK; Hollytex Carpet Mills, Inc., of City of Industry, CA; Will, Janney, Elstner and Associates, Inc., of Northbrook, IL; and L & W Supply Corporation, Columbia Building Materials Corporation, C–S–W Drywall Supply Company, Gypsum Services Corporation, Stocking Specialists, Inc., United States Gypsum Export Company, and USG Insulation Company, all of Chicago, IL.

MC 152897 (Sub-2), filed November 9, 1982. Applicant: J. E. WILLIAMS TRUCKING, INC., P.O. Box 30371, Billings, MT 59107. Representative: J. E. Williams (same address as applicant). Transporting (1) *food and related products,* and (2) *transportation equipment,* between points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, and WY.

MC 156107 (Sub-3), filed November 9, 1982. Applicant: VARDAROS MOTOR LINES, INC., Suite 1530 H, 510 Plaza Dr. College Park, GA 30349. Representative: Virgil H. Smith, 74 Hwy N. Box 245, Tyrone, GA 30290, (404) 969–1980. Transporting (1) *chemicals and related products,* (2) *tires and related products,* and (3) *textile goods,* between points in the U.S. (except AK and HI).

MC 158936, filed November 8, 1982. Applicant: DIESEL SERVICES, INC., d.b.a. D.S.I. TRANSPORTATION CO., 127 Bound Brook Ct., Sewell, NJ 08080. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., 426 Cottman St., Jenkintown, PA 19046, (215) 576–0131. Transporting *petroleum and its products,* between points in the U.S. (except AK and HI) under continuing contract(s) with Swann Oil, Inc., of Bala Cynwyd, PA and Petroleum Heat & Power Co., of Philadelphia, PA.

MC 160706 (Sub-1), filed November 10, 1982. Applicant: CHARLES FOLKENS, Rural Rt. 1, Big Lake, MN 55309. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *plumbing and heating supplies,* between points in the U.S. (except AK and HI), unde continuing contract(s) with Roberts Hamilton Co., of Golden Valley, MN.

MC 163047, filed October 29, 1982. Applicant: RAIL-WATER TRANSPORT, INC., 3153 Bankhead Hwy, P.O. Box 93216, Atlanta, GA 30377. Representative: Raymond R. Keigher, Suite 102, 401 E. Jefferson St., Rockville, MD 20850, (301) 424–2420. Transporting *general commodities* (except classes A and D explosives) between points in the U.S., under continuing contract(s) with Marine Intermodal Cooperative Association, of Portland, OR.

MC 163667, filed November 12, 1982. Applicant: ARTHUR W. ROWLEY, d.b.a. ROWLEY ENTERPRISES, 1419 W. 1750 N., Layton, UT 84041. Representative: Arthur W. Rowley, P.O. Box 510872, Salt Lake City, UT 84151, (801) 825–3765. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, IL, IA, KS, MT, MO, NE, NV, NM, OK, OR, TX, UT, and WY.

MC 164656, filed November 12, 1982. Applicant: KEVIN KASTER d.b.a. KASTER MOVING CO., 22 Vitti St., New Canaan, CT 06840. Representative: Sidney L. Goldstein, 109 Church St., New Haven, CT 06510, (203) 787–1288. Transporting *household goods and kitchen cabinets,* between points in Fairfield County, CT, on the one hand, and, on the other, points in NY, NJ, MA, and RI.

MC 164657, filed November 12, 1982. Applicant: LEEMAR TRANSPORT CORPORATION, 61 Lincoln Highway, South Kearny, NJ 07032. Representative: Eugene M. Malkin, Suite 1832, Two

World Trade Center, New York, NY 10048, (212) 466–0220. 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 The Baxter Corporation and its subsidiary, Astro Packaging, Inc., both of Hawthorne, NJ, Nexus, Inc., of Oakland, NJ, Filtrator Coffee Apparatus Co., Inc., of Clifton, NJ, I. B. Meyer Plastics, Inc., of Linden, NJ, Protective Lining Corp., of Brooklyn, NY, Tai Wing Hong Importers, Inc., of New York, NY, Wei Chuan International, Inc., of Jersey City, NJ, Ampco Packing, Inc., of Jersey City, NJ, C.P.I., Inc., of Marlboro, NJ, Gardner Asphalt Corporation, of South Kearny, NJ, Mercury Foam Corp., and Tek-Pak, Inc., both of Hackensack, NJ, and Bannon Group Ltd., of New York, NY.

MC 164666, filed November 12, 1982. Applicant: RAYMOND SAND d.b.a SAND CONSTRUCTION, P.O. Box 226, Dallas, SD 57529. Representative: Raymond Sand (Same address as applicant), (605) 835–9308. Transporting *machinery*, between points in IA and SD.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–32631 Filed 11–29–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

National Advisory Committee for Juvenile Justice and Delinquency Prevention

The twenty-fifth quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention will be held in San Diego, California on January 17 and 18, 1983. The meeting will take place at the Vacation Village Hotel and will run from 9:00 a.m. to 5:00 p.m. on both January 17 and 18.

Agenda items will include: dissemination options for juvenile justice standards; juvenile probation; illegal juvenile immigrants; model code for constitutional standards for juveniles; and OJJDP's FY 83 program plan. Members of the public are welcome to attend.

Further information regarding this meeting may be obtained by contacting Nancy L. Kujawski, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (202) 724–7751.

Dated: November 18, 1982.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 82–32598 Filed 11–29–82; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b) 1932 or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000, Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C., this 22nd day of November 1982.

Robert S. Kenyon,

Director, Office of Program Operations.

APPLICATIONS RECEIVED DURING THE WEEK ENDING NOVEMBER 27, 1982

Name of Applicant and Location of Enterprise	Principal Product or Activity
Grit Publishing Company, Williamsport, Pennsylvania.	Sales of publishing and printing.
Lebanon Woolen Mills, Inc., Lebanon, Tennessee.	Manufacture of industrial fabrics and production of blankets and bedspreads.

[FR Doc. 82–32586 Filed 11–29–82; 8:45 am]

BILLING CODE 4510–30–M

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 November 15, 1982–November 19, 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–13,358; Armco, Inc., Butler Works, Butler, PA

TA–W–13,344; Checker Motors Corp., Kalamazoo, MI

TA–W–13,354; Ford Motor Credit Co., Springfield, MA

TA–W–13,084; Union Carbide Corp., Metals Div., Alamo, NV

TA–W–13,392; Union Carbide Corp., Metals Div., Bishop, CA

TA–W–12,924; Phyllis Sportswear, Inc., New York, New York

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–13,144; Ford Motor Co., Cleveland Casting Plant, Cleveland, OH

TA–W–13,142; Ford Motor Co., Engine Plant 1, Cleveland, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–13,386; Columbiana Pump Co., Columbiana, OH

Aggregate U.S. imports of iron castings are negligible.

TA–W–13,424; American Rehers Zwirne, Ltd, Shelby, NC

Aggregate U.S. imports of yarn are negligible.

Affirmative Determinations

TA–W–12,957; Foster Grant Co., Inc., Leominster, MA

A certification was issued in response to a petition received on August 27, 1981 covering all workers separated on or after January 4, 1982.

TA–W–13,477; Delcor Fashions Co., Inc., Jersey City, NJ

A certification was issued in response to a petition received on May 18, 1982 covering all workers separated on or after January 22, 1982.

TA–W–13,415; Norah Fashions, Dunmore, PA

A certification was issued in response to a petition received on April 7, 1982 covering all workers separated on or after March 31, 1980 and before December 1, 1981.

TA–W–13,143; Ford Motor Co., Engine Plant 2, Cleveland, OH

A certification was issued in response to a petition received on December 4, 1981 covering all workers separated on or after December 26, 1981.

I hereby certify that the aforementioned determinations were issued during the period November 15, 1982–November 19, 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: November 23, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–32693 Filed 11–29–82; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total of partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 22d day of November 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Motors Sales Corp., Atlanta Zone (company)	Stone Mountain, Ga	11/16/82	11/10/82	TA–W–13,949	Sales office.
American Motors Sales Corp., Boston Zone—Sales Office (company).	Westwood, Mass	11/16/82	11/10/82	TA–W–13,950	Sales office.
American Motors Sales Corp., Boston Zone and Parts Distribution Center (company).	Mansfield, Mass	11/16/82	11/10/82	TA–W–13,951	Parts distribution and sales office.
American Motors Sales Corp., Chicago Zone (company)	Elk Grove Village, Ill	11/16/82	11/10/82	TA–W–13,952	Sales office.
American Motors Sales Corp., Cincinnati Zone (company)	Cincinnati, Ohio	11/16/82	11/10/82	TA–W–13,953	Sales office.
American Motors Sales Corp., Dallas Zone (company)	Dallas, Tex	11/16/82	11/10/82	TA–W–13,954	Sales office.
American Motors Sales Corp., Denver Zone (company)	Denver, Colo	11/16/82	11/10/82	TA–W–13,955	Sales office.
American Motors Sales Corp., Detroit Zone Sales Office (company).	Southfield, Mich	11/16/82	11/10/82	TA–W–13,956	Sales office.
American Motors Sales Corp., Detroit Zone, Parts Distribution Center (company).	Detroit, Mich	11/16/82	11/10/82	TA–W–13,957	Parts distribution and sales office.
American Motors Sales Corp., Kansas City Zone (company).	Overland Park, Kans	11/16/82	11/10/82	TA–W–13,958	Sales office.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Motors Sales Corp., Los Angeles Zone Sales Office (company).	El Segundo, Calif	11/16/82	11/10/82	TA-W-13,959	Sales office.
American Motors Sales Corp., Los Angeles Zone Parts Distribution Center (company).	Carson, Calif	11/16/82	11/10/82	TA-W-13,960	Parts distribution and sales office.
American Motors Sales Corp., Minneapolis Zone (company)	Minneapolis, Minn	11/16/82	11/10/82	TA-W-13,961	Sales office.
American Motors Sales Corp., New York Zone (company)	Elmsford, N.Y	11/16/82	11/10/82	TA-W-13,962	Sales office.
American Motors Sales Corp., Philadelphia Zone Sales Office (company).	Depford, N.J	11/16/82	11/10/82	TA-W-13,963	Sales office.
American Motors Sales Corp., Pittsburgh Zone Sales Office (company).	Warrendale, Pa	11/16/82	11/10/82	TA-W-13,964	Sales office.
American Motors Sales Corp., Pittsburgh Zone Parts Distribution Center (company).	Warrendale, Pa	11/16/82	11/10/82	TA-W-13,965	Parts distribution and sales office.
American Motors Sales Corp., Portland Zone Parts Distribution Center (company).	Portland, Oreg	11/16/82	11/10/82	TA-W-13,966	Parts distribution and sales office.
American Motors Sales Corp., Washington Zone (company)	McLean, Va	11/16/82	11/10/82	TA-W-13,967	Sales office.
American Motors Corp., National Parts Distribution Center (company).	Milwaukee, Wis	11/16/82	11/10/82	TA-W-13,968	Parts distribution.
American Motors Corp., Milwaukee Manufacturing Plant (company).	Milwaukee, Wis	11/16/82	11/10/82	TA-W-13,969	Automobiles and jeep utility vehicles.
Arjon (workers)	Hillside, N.J	11/15/82	11/3/82	TA-W-13,970	Items, hooks, brackets and chains magnetic—for plants.
Armstrong Rubber Co., Special Products Division (URW)	Little Rock, Ark	11/15/82	11/12/82	TA-W-13,971	Tubes—inner for tires.
Boart Hardmetals, Inc. (workers)	Meyerstown, Pa	11/12/82	11/9/82	TA-W-13,972	Bits, button—rockdrill.
CF & I Steel Corp., Bokoshe Mine (UMWA)	Bokoshe, Okla	11/16/82	11/9/82	TA-W-13,973	Coal mining.
Firestone Tire & Rubber Co. (URW)	Russellville, Ark	11/15/82	11/11/82	TA-W-13,974	Tubes—inner for tires.
Goodyear Tire & Rubber Co. (URW)	Gadsden, Ala	11/15/82	11/11/82	TA-W-13,975	Tubes—inner tires—passenger, truck & tractor.
(The) Indianapolis Rubber Co., Inc. (URW)	Indianapolis, Ind	11/15/82	11/11/82	TA-W-13,976	Tubes—inner for tires.
B. F. Goodrich Tire Co. (URW)	Miami, Okla	11/15/82	11/11/82	TA-W-13,977	Tubes—inner for tires.
Mountain States Mineral Enterprises, Inc. (company)	Tucson, Ariz	11/15/82	11/10/82	TA-W-13,978	Fabrication assembly, engineering and services for copper mines.
Pantasote, Inc. (workers)	Point Pleasant, W. Va	11/12/82	11/9/82	TA-W-13,979	Poly vinyl chlorida resins (Plastics).
Republic Steel Corp., General Office (workers)	Cleveland, Ohio	11/1/82	10/28/82	TA-W-13,980	Administrative and sales office.
Stakpole Components Co. (UAW)	Lumberton, N.J	11/12/82	11/1/82	TA-W-13,981	Components—electronic.
Standex Electronics (workers)	Cincinnati, Ohio	11/12/82	10/23/82	TA-W-13,982	Capacitors—electronic fixed and variable, underwood.
Tac Tec Systems, Inc. (IBEW)	Meadowlands, Pa	11/12/82	10/25/82	TA-W-13,983	Radios—two-way—mobile.
(The) Timken Co. (USWA)	Canton, Ohio	11/12/82	11/9/82	TA-W-13,984	Bearings—roller, tapered steel, specialty.
U.S. Steel Corp., USS Fabrication Division (workers)	Ambridge, Pa	11/12/82	11/8/82	TA-W-13,985	Steel, structural, fabricated.
Westinghouse Elevator Co. (IBEW)	Randolph, N.J	11/12/82	11/4/82	TA-W-13,986	Elevators and escalators.

[FR Doc. 82-32894 Filed 11-29-82; 8:45 am]
BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-3448]

Proposed Exemption for Certain Transactions Involving Michael L. Perich, D.D.S. Inc. Profit Sharing Plan; Located in Sacramento, California

AGENCY: Office of Pension and Welfare Benefit Programs, 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 proposed cash sale of a limited partnership interest by the Michael L. Perich, D.D.S. Inc. Profit Sharing Plan (the Plan) to Dr. Michael L. Perich (Dr. Perich), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan and Dr. Perich.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 14, 1983.

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, N.W., Washington, D.C. 20216, Attention: Application No. D-3448. 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, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8971. (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 406(b)(1) and (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 Plan's accountant, 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. The Plan is a profit sharing plan with 5 participants and total assets as of May 31, 1982 of $165,836.40. Dr. Perich is the sole shareholder of Michael L. Perich, D.D.S., Inc. the Plan's sponsor, and trustee of the Plan.

2. In September 1979, the Plan purchased 2 limited partnership units in a partnership known as Trust Investors Limited (the Partnership Interest). The Partnership Interest was purchased from

an unrelated party for $60,000. The partnership was formed for the investment of funds in California ranch land.

3. The partnership has been unsuccessful in securing buyers for the property it purchased and as a result filed a petition for bankruptcy on January 6, 1981 under Title XI of the U.S. Code. The original general partner of the partnership was removed by vote of the other partners on July 8, 1981. The new general partner has indicated that the sale of the property held by the partnership could take from 3 to 6 years and the partners may ultimately receive as little as ⅛ of their original investment.

4. Dr. Perich has offered to buy the Plan's Partnership Interest for $75,000.[1] All costs of the transaction will be borne by Dr. Perich. In addition, Dr. Perich will hold the plan harmless from any past or future losses arising from the Plan's ownership of the Partnership Interest.

5. The applicant represents that at the purchase price offered, the Plan will have earned 25% on its investment over the period it was held. Additionally, the Plan will be able to dispose of an illiquid, non-income producing asset which represents almost 40% of the Plan's total assets.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) It will be a one time transaction for cash;

(b) All costs of sale for the transaction will be paid by Dr. Perich;

(c) The Plan will be able to dispose of an illiquid, non-income producing asset;

(d) Dr. Perich will hold the Plan harmless from past and future losses arising from the Plan's owning an interest in the partnership; and

(e) The Plan trustee has determined that the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Plan participants and beneficiaries by hand delivery or first class mail within 15 days after the notice of pendency is published in the **Federal Register.** The notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of 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 ruler. 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) and 406 (b)(1) and (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 cash sale of the Partnership Interest by the Plan to Dr. Perich for $75,000, provided that this amount is not less than the fair market value at the time of sale.

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 November, 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. 82–32570 Filed 11–29–82; 8:45 am]

BILLING CODE 4310–29–M

[1] The purchase price of $75,000 was arrived at by taking the Plan's initial investment of $60,000 and adding an 8% annual return, which was the amount earned by the Plan on its other investments.

[Application No. D–3422]

Proposed Exemption for Certain Transactions Involving the Wyman, Green & Blalock, Inc., Profit Sharing Plan and Trust; Located in Bradenton, Florida

AGENCY: Office of Pension and Welfare Benefit Programs, 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 a lease of real property by the Wyman, Green & Blalock, Inc. Profit Sharing Plan and Trust (the Plan) to Wyman, Green & Blalock, Inc. (the

Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective April 8, 1983.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before January 31, 1983.

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, N.W., Washington, D.C. 20216, Attention: Application No. D–3422. 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, N.W., 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 sections 406(a), 406 (b)(1) and (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 on behalf of the Employer, 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. The Plan is a defined contribution plan with approximately 15 participants. As of August 31, 1981, the Plan had total assets of $488,952.

2. On April 11, 1968, the Plan acquired unimproved lots 1, 2, 3 and 4, Block 14, Pelot's addition to Bradenton, from unrelated parties, for $45,000. On January 19, 1970, the Plan borrowed $60,000 from the Employer to make improvements on the property.[1] A building was constructed with these funds. The ortgage that was given to the Employer to cover this loan was satisfied on January 16, 1978.

3. On January 19, 1970, the Plan and the Employer entered into a lease agreement (the First Lease) whereby the Employer would use Lots 1 and 2 for a term of 15 years at an annual rental of 8% of the value of the property, agreed as $25,000, plus 10% of the cost of the improvements, estimated to be $90,000.

4. On December 19, 1979, the Employer sold Lot 6 to the Plan, and the Plan borrowed $50,000 at 9% interest per annum from the Employer in order to construct an addition to the existing building. Also on December 19, 1979, the First Lease was rewritten to include Lots 3, 4 and 6 at a rental of $13,000 per year, plus an additional $17,500 per year upon the completion of the addition to the building.[2] The building addition was completed and the rent increase was effective August, 1980. The applicant represents that it believes the First Lease was covered by the transition rules contained in sections 414 and 2003 of the Act, but that the lease as amended in 1979 (the 1979 Lease) was no longer covered by such transition rules.[3]

5. Mr. Duncan Riddle, M.A.I., of Bradenton, Florida, an independent appraiser, estimated the fair market rental value of the property subject to the 1979 lease to be $33,276 per annum as of June 23, 1980. The applicant represents that it will pay the Plan any difference between the fair market rental value and the actual rent paid, $30,500 per annum, plus appropriate interest as determined by the Plan's independent trustee, for the period from the beginning of the 1979 Lease until that lease was amended.

6. On February 1, 1982, the 1979 Lease was amended. The rent to be paid to the Plan was increased to $36,000 per annum. Mr. Riddle had updated his original appraisal of the subject property to establish an estimated fair market rental value of $35,536 per annum as of January 26, 1982. The modified lease, which is the subject of this proposed exemption, also provides for a yearly adjustment in the rent based upon the Consumer Price Index. The yearly rent shall never be less than $36,000. The lease expires January 18, 1985, and the Employer has an option to renew the lease for an additional 15 year period beyond that date. The Plan's original cost of the leased property was approximately $230,000. The property is now valued at approximately $285,000.

7. On April 8, 1982, southeast Bank, N.A. of Tampa, Florida (the Bank), was appointed the trustee for the Plan, replacing the Plan's prior trustee, the Ellis First National Bank of Bradenton. Prior to the Bank's acceptance of its role as independent trustee for the Plan, it had received for its review copies of the proposed lease modification and the January 26, 1982 appraisal by Mr.Riddle. The Bank determined that the lease as modified is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries, and accordingly, it approved the lease arrangement. The Bank represents that it recognized the significant percentage of Plan assets that the property represents, but the Bank believes that it has generated an attractive return in the past for Plan participants. The Bank further represents that, in view of the modifications made to the lease, the participants will only further enjoy the benefits of this investment. The Bank represents that it will be taking appropriate action to see that the percentage of the Plan's total assets held in this property will be diminished. The Bank believes that it would be inappropriate to sell the building at this time due to current economic conditions. The Bank represents that the building is well maintained, adaptable for many purposes, and readily saleable, but the Plan is unable to receive fair market value for the building due to current economic conditions. It has been represented that there is sufficient liquidity for the Plan to meet temination and/or retirement distributions. Since April 8, 1982, the Bank has, and will continue to monitor the lease during its course and will take whatever action is necessary to enforce the Plan's rights under the lease.

8. The applicant represents that it has paid or will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of all of its prior prohibited transactions with the Plan within 60 days of a final notice of the

[1] In this proposed exemption the Department expresses no opinion regarding the applicability of sections 414 and 2003 of the Act with respec to the January 19, 1970 loan.

[2] The Department is not proposing an exemption for the December 19, 1979 transactions.

[3] In this proposed exemption the Department expresses no opinion regarding the applicability of sections 414 and 2003 of the Act with respect to the First Lease.

granting of the exemption proposed herein.

9. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) The Plan's independent trustee, the Bank, has approved the transaction as appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (2) the Bank will monitor the lease and enforce the Plan's rights under the lease; (3) the rent is greater than the fair market rental value as established by independent appraisal, and will be adjusted annually according to the Consumer Price Index; and (4) the applicant will fully comply with the excise tax provisions of section 4975 of the Code.

Notice to Interested Persons

Within 30 days of the publication of this proposed exemption in the **Federal Register**, the applicant shall provide notice to all employees of the Employer, to all Plan participants, and to all former participants to whom benefits are now being paid. Notice shall be either by mailing or hand delivery, and shall inform 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, effective April 8, 1982, the restrictions of section 406(a), 406(b)(1) and (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 lease of the subject property by the Plan to the Employer, under the terms and conditions set forth in this notice, provided such terms are not less favorable to the Plan than 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 transaction which is the subject of this proposed exemption.

Signed at Washington, D.C., this 23rd day of November, 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. 82-32569 Filed 11-29-82; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-3494 and D-3495]

Proposed Exemption for Certain Transactions Involving Employees Pension and Investment Plan of L.J. Ley, M.D., Inc. Medical Corporation and the Employees Pension and Investment Plan of K.M. Burge, M.D., Inc. Medical Corporation, Located in Richmond, Indiana

AGENCY: Office of Pension and Welfare Benefit Programs, 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 cash sale of certain improved real property by the Employees Pension and Investment Plan of L.J. Ley, M.D., Inc. Medical Corporation and the Employees Pension and Investment Plan of K.M. Burge, M.D., Inc. Medical Corporation (the Plans) to Drs. L.J. Ley and K.M. Burge, the trustees of their respective Plans, and therefore parties in interest with respect to the Plans. The proposed exemption, if granted, would affect participants and beneficiaries of the Plans and the Plans' trustees.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 10, 1983.

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, N.W., Washington, D.C. 20216, Attention: Application Nos. D-3494 and D-3495. 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, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8971. (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 406 (b)(1) and (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 legal counsel for the Plans, 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. The Plans are qualified pension plans maintained by K.M. Burge, M.D., Inc. (KMB) and L.J. Ley, M.D., Inc. (LJL). As of August 27, 1982, there were 6 participants in the KMB plan and 3 participants in the LJL plan. As of April 1, 1982, there were total net assets of $550,987 in the KMB plan and $326,434 in the LJL plan.

2. On December 29, 1980, each Plan purchased an undivided one-half interest, as tenants in common, in a parcel of undeveloped ocean-front property from Albert and Carol Riggs (the Riggs), located at 2035 Surfside, Vero Beach, Florida. The land was purchased from the Riggs for $149,000. The applicant represents that this price was approximately $40,000 below the fair market value of the real estate because at the time of purchase the land had no access to electrical utilities.

The Plans paid $44,000 down and signed a 3 year purchase money mortgage for the balance of $105,000 to be paid in 6 semi-annual payments with interest payable at 12 percent annum. The closing costs were $962.70 and these as well as all other expenses were equally shared by the Plans. In March 1981, the Plans paid to the City of Vero Beach, Florida, the sum of $3,500 for the installation of electrical services (including acquisition of a utility easement) for the subject real estate.

3. The Plans then constructed a 3,672 square foot residence on the land for the purpose of renting said residence to acquire income for the Plans and with the expectation that the improved real estate (the Property) might substantially appreciate in future years. As of August 27, 1982, the Plans' total cash expenditures for the Property was $499,038.[1] The applicant represents that the Property has not been used by or leased to parties-in-interest with respect to the Plans.

4. Subsequently, because of the general decline in the economy, the Plans' trustees believe that the receipt of maximum rental income from the Property is unlikely and, therefore desire to sell the Property to themselves for $499,038 in cash. However, in no event will the cash payment received by the Plans be less than the total cash payments made by the Plans in connection with the Property. All expenses connected with the sale of the Property will be paid by the Plans' trustees and no sales commissions will be paid by the Plans. Also, the Plans' trustees represent that the Plans' liquidity will be enhanced and the Plans will be able to reinvest the cash proceeds in more secure and liquid income producing assets.

5. An appraisal of the Property prepared by William R. Kellogg, an independent appraiser, dated April 1, 1982, concludes that the present fair market value of the Property is $485,000.

6. In summary, the Plans' trustees represent that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale will be a one time transaction for cash;

(b) All expenses connected with the sale of the Property will be paid by the Plans' trustees;

(c) No sales commissions will be paid by the Plans;

(d) The Plans' trustees have determined that the proposed transaction is in the best interests of the Plans and their participants and beneficiaries.

Notice to Interested Persons

Notice will be given within 10 days of the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption. The notice will be sent to all the Plans' participants by registered mail and will be posted on bulletin boards at the principal offices of the Employers.

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

[1] In this proposed exemption the Department expresses no opinion as to whether the Plans' acquisition or holding of the Property violates any provision of Part 4 of Title I of the Act.

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) and 406(b)(1) and (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 cash sale of the Property by the Plans to the Plans' trustees, provided that the terms and conditions of sale are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party at the time of consummation of the transaction, and further provided that the cash payment received by the Plans is no less than the Plans' cash expenditures in connection with the Property through the date of sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and respresentations 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 22nd day of November 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. 82–32571 Filed 11–29–82; 8:45 am]

BILLING CODE 4510–29–M

Alta Industries, Ltd. Employees Profit Sharing Plan (the Plan), Located in Salt lake City, Utah, et al., Proposed Exemptions

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

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 Avenune, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications 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, N.W., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or 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, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[Application No. D–3144]

Alta Industries, Ltd. Employees Profit Sharing Plan (the Plan), Located in Salt Lake City, Utah

Proposed Exemption

The Department is considering granting an 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) 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 (D) of the Code shall not apply, effective February 2, 1982, to the sale of 355 limited partnership interests (the Interests) in Alta Industries Ltd. (the Partnership), the sponsor of the Plan, to Mr. Leon Hansen (Mr. Hansen), a party in interest with respect to the Plan, for $2,928, provided that this amount was not less than the fair market value of the Interests on the date of sale.

Effective Date: If the proposed exemption is granted, this exemption will be effective February 2, 1982.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of December 31, 1980, had 370 participants. As of March 31, 1981, the Plan had total assets of $353,667. First Security Bank of Utah serves as the trustee of the Plan (the Trustee) and, from June, 1976 to December 23, 1981, pursuant to the Plan document, had exercised sole discretion with respect to investment decisions of the Plan. The Plan provides that the Partnership may appoint an investment manager which may thereby direct the Trustee with respect to Plan investments. On December 23, 1981, the Trustee was relieved of its investment responsibility with respect to Plan assets, as an investment manager, Wasatch Advisors, was appointed by the Partnership to direct the investments to be made by the Trustee.

2. The Partnership is a limited partnership organized under Utah law engaged in the sale of steel products and wholesale and retail music products. The Partnership was formed pursuant to

the complete liquidation and dissolution of Alta Industries Corporation (the Corporation) when all of the assets of the Corporation were transferred to the Partnership, subject to all of its liabilities and obligations. As part of the dissolution process shareholders of the Corporation had the right to receive the Interests evidencing an ownership interest in the Partnership, and certain shareholders had the right to receive cash in lieu of the Interests. Shareholders of the Corporation, except certain principal stockholders and their affiliates who held 53.1% of the stock, had the right to receive $12 per share in lieu of the Interests. However, shareholders holding in excess of 2,000 shares were not entitled to receive cash for shares in excess of 2,000 shares.

3. The program of dissolution was effected on September 13, 1979, when 141,309 shares of stock were cancelled in exchange for the distribution of approximately $1,695,000 in cash and the remaining 836,754 shares were cancelled in exchange for 977,963 units of the Interests. Immediately thereafter cash of approximately $3,805,000 constituting the remaining net cash proceeds from the sale of a division of the Corporation and certain other property was distributed to the holders of the interests.

4. On September 13, 1979, the Plan owned 8,237 shares of common stock of the Corporation. The stock was contributed to the Plan by the Corporation prior to enactment of the Act. Pursuant to the liquidation and dissolution of the Corporation, the Plan received in exchange for such stock 9,628 units of Interests, and a cash payment of $37,443.[2] The Plan exchanged its stock upon similar terms as those other shareholders who received the Interests in the Partnership and a cash distribution from the sale of certain assets of the Corporation. The Trustee determined that it was in the best interests of the Plan to receive the Interests instead of a $12 per share cash payment for 2,000 shares of the stock held by the Plan.

5. Since acquisition the Plan has distributed 1,430 Interests to terminated participants. In January, 1982, the Plan sold, through an investment banker, Boettcher Company, located in Salt Lake City, Utah, 7,843 of the Interests to unrelated parties. On February 2, 1982, the Plan directly sold the remaining 355 Interests to Mr. Hansen, an employee of the Partnership for $8.25 a unit. Mr. Hansen is a manager of a division of the Partnership and is not a fiduciary with respect to the Plan. The Plan no longer holds any Interests. On February 2, 1982, the bid price for the Interests was $6.50 a unit and the asked price was $8.00. Wasatch Advisers, the current investment manager, made the decision to sell the Interests. The Plan did not incur any sales expense with regard to the sale to Mr. Hansen.

6. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because (a) the Interests were sold to Mr. Hansen for cash at a price no less than their fair market value; (b) the Plan did not incur any expenses with regard to the sale; and (c) Wasatch Advisers represents that the sale of the Interests to Mr. Hansen was in the best interests of the Plan.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

[Application No. D–3273]

The Westview Clinic, P.A. Profit Sharing Plan and Trust (the Plan) Located in West St. Paul, Minnesota

Proposed Exemption

The Department is considering granting an 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 (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: (1) a loan (the Loan) by the Plan of $80,000 to Emerson Building and Leasing Company (Emerson), provided the terms and conditions of such Loan remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and (2) the guaranty of repayment of the Loan by the general partners (the General Partners) of Emerson.

Summary of Facts and Representations

1. Westview Clinic, P.A. (Westview) is a medical clinic located in West St. Paul, Minnesota and organized as a professional corporation under Minnesota law sine 1972. Westview is owned by five physician shareholders who are also its employees. They are: Lawrence J. Swanson, M.D., Ralph H. Swanson, M.D., Ralph M. Ramlow, M.D., Alex D. Lowe, M.D. and James W. Haight, M.D. A sixth physician, John A. Beall, M.D., is an employee but not a shareholder of Westview.

2. The Plan is an integrated profit sharing plan which has been in existence since September 1972. As of August 31, 1981, the Plan had fourteen participants and total net assets of $285,266. Drs. Ramlow and Swanson, who serve as the Trustees, are responsible for making investment decisions affecting the Plan.

3. Emerson, a general partnership located in West St. Paul, Minnesota, has been engaged since April 1981 in the acquisition and holding for investment purposes of computer equipment to be used by Westview. The shareholders of Westview are General Partners of Emerson.[3]

4. On March 16, 1981, Emerson purchased certain computer equipment (the Equipment) consisting of hardware and software from Edelman Systems, Inc. (ESI) of Baton Rouge, Louisiana for a total purchase price of $115,350. ESI is an unrelated entity which for the past twelve years has been providing stand-alone computer systems to medical practices. Emerson subsequently leased the Equipment (the Lease) to Westview for a three year period beginning on April 1, 1981. The Lease, which is not automatically renewable, provides for a total monthly rental of $2,607. Emerson is obligated to maintain, service, repair and insure the Equipment at its sole cost and expense. Upon termination of the Lease, Westview is required to return the Equipment to Emerson.

5. The Plan proposes to lend $80,000 to Emerson to refinance the purchase of the Equipment.[4] The Loan will be evidenced by a promissory note providing for the repayment of the obligation in 83 equal monthly installments of principal and interest. The Loan will carry interest at the rate of ¼ percent above the prime rate

[2] The applicant represents that the exchange of the stock for the Interests is a transaction described within section 407(d)(8) of the Act and therefore should not be treated as an acquisition by the Plan. In this proposed exemption, the Department expresses no opinion as to whether the exchange is a transaction described in section 407(d)(8) of the Act.

[3] The same parties involved as either shareholders of Westview or General Partners of Emerson maintain a corporation known as S & R Realty Company, Inc. (S&R) which is located in East St. Paul, Minnesota. S&R owns the building and equipment utilized by Westview in its practice. Although S&R is not a party to the proposed transactions, it is anticipated that at some future date, all of the assets and liabilities of S&R will be merged with those of Emerson.

[4] S&R initially financed the purchase of the Equipment. The entire purchase price was not due at the time of installation but was payable as the seller, ESI, demonstrated that the hardware and software systems functioned properly. As each phase of the computer system was put into operation, payment was made for that part of the system. The total system has been installed except for a portion of the financial reporting software which is presently in the process of being installed.

charged by Northwestern National Bank of Minneapolis (Northwestern), located in Minneapolis, Minnesota. The interest rate will also have a floor of 12 percent per annum and will be adjusted on a monthly basis by an independent fiduciary designated to oversee the proposed transactions.

6. The Loan will be collateralized by first security interests in the Equipment as well as the accounts receivable (the Receivables) of Westview to the extent of $16,000 (or 20 percent of the value of the Loan). The respective security interests will be documented by a Security Agreement executed between the Plan, Emerson and Westview. As further security, the General Partners of Emerson, who had a combined net worth in excess of $2 million January 8, 1982, have agreed to guarantee the Loan should it become in default.

7. By letter dated August 9, 1982, ESI states that the Equipment has a value at the time of installation that is the same as the $113,350 original purchase price. ESI indicates that the hardware components are standard, of high quality and manufactured by leaders in the computer industry. ESI believes the system will depreciate at the rate of 7 percent to 12 percent per year and the compononets are definitely resaleable on the current used market.

8. The $16,000 in Receivables, which Westview has pledged as additional collateral for the Loan, represent charges for professional services rendered by the physicians affiliated with Westview. Over a twelve month period beginning August 1, 1981 and ending July 31, 1982, Westview had total Receivables of $968,461 and total actual payments of $966,608 or a total collection percentage of 99.81 percent. Westview typically collects 95 percent of the Receivables between six and twelve months. Approximately 42 percent of the Receivables (representing $158,910) are between 0 to 120 days old. An estimated 58 percent of the Receivables (representing $215,170) are 120 days and over.

9. Richfield Bank and Trust Company (Richfield) of Richfield, Minnesota has reviewed the terms of the proposed transactions and has agreed to serve as the independent fiduciary with respect to the Loan. Richfield represents that it does not presently have, nor has it had substantial business dealings with Emerson, Westview or S&R. As the independent fiduciary, Richfield's duties will include monitoring Loan payments, adjusting the interest rate for the Loan as required, ensuring that the collateral is at all times equal to at least 150 percent of the outstanding Loan balance, demanding additional collateral if the value of the Equipment and Receivables falls below the acceptable level, annually reviewing financial statements for the Plan and Emerson so as to monitor the stability of Emerson and the liquidity and diversity of the Plan's investments during the term of the Loan, and taking all actions necessary to protect and enforce the interests of the Plan.

Richfield has determined that the proposed transactions are in the best interests of the Plan's participants and beneficiaries and are protective of their rights. In addition, Richfield believes the proposed transactions are feasible for the Bank to oversee. In concluding that the Loan is an appropriate investment for the Plan, Richfield has reviewed the overall portfolio for the Plan; considered the cash flow needs of the Plan, including the assets that might have to be sold; considered the diversification of the Plan's assets; and examined the proposed investment in light of the Plan's investment scheme. Richfield has also examined the specific terms of the Loan, the appraisals of the collateral, and the Lease between Emerson and Westview for the rental of the Equipment. Richfield is cognizant that the term of the Lease is for a period of three years and it does not provided for automatic renewal be Westview. However, in light of the fact that the Lease will not serve as Loan security and the fact that the Equipment is resaleable at the end of the seven year Loan repayment period, Richfield does not consider these factors material to the issue of the appropriateness of the Equipment as Loan collateral.

10. In summary, it is represented that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) The terms and conditions of the transactions will be monitored by Richfield who will act in the capacity of an independent fiduciary; (b) the Loan will be secured by a first security interest in the Equipment and the Receivables, as well as the personal guaranty of the General Partners; and (c) Richfield has determined that Loan and graranty are appropriate transactions for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[Application No. D-3485]

The Nassau County Carpenters' Vacation Fund (the Vacation Plan) Located in Westbury, New York

Proposed Exemption

The Department is considering granting an 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 the restrictions of section 406(b)(2) of the Act shall not apply to the transfers by the Vacation Plan of: (1) $200,000 in uncommitted reserves to the Nassau County Carpenters' Welfare Fund (the Welfare Plan); and (2) $100,000 in uncommitted reserves to the Nassau County Carpenters' Pension Plan (the Pension Plan). (These plans are collectively referred to as the Plans.)

Summary of Facts and Representations

1. The Vacation Plan is a welfare plan, established in accordance with section 302 of the Labor-Management Relations Act of 1947, as amended, by the District Council of Nassau County and Vicinity (the District Council), the United Brotherhood of Carpenters and Joiners of America of the AFL-CIO, and by several employer associations and independent employers (the Employers), who have collective bargaining agreements with the District Council and are engaged in the building and construction industry. The Vacation Plan maintains its principal offices in Westbury, New York. As of May 19, 1982, the Vacation Plan had total assets of $1,666,000 and provided vacation benefits to approximately 1,442 participants. The Vacation Plan is administered by twelve trustees, half of whom are appointed by constituent local unions affiliated with the District Council. The six remaining trustees are appointed by the Employers. The same persons also serve as trustees of the Welfare Plan and the Pension Plan.

2. The Vacation Plan pays out vacation benefits to participants once per year, based on amounts in each participant's account. Employers contribute to each account based on the number of hours worked by each participant at the hourly rate established in the applicable collective bargaining agreement.

3. The Welfare Plan provides a full range of self-insured health and welfare benefits to participants, virtually all of whom participate in the Vacation Plan. Net assets of the Welfare Plan were $6,147,250 as of June 30, 1981. Also on that date, the Welfare Plan had an estimated 1,348 participants.

4. The Pension Plan is a defined benefit plan providing retirement benefits to practically all of the individuals who participate in both the Vacation Plan and the Welfare Plan. As of June 30, 1981, net assets of the Pension Plan were $22,166,784 and the average number of participants, retirees and beneficiaries was 2,400.

5. The Vacation Plan requests an exemption in order to transfer a total of $300,000 held in uncommitted reserves [5] to the Welfare Plan and the Pension Plan. Of this amount, the Welfare Plan will receive $200,000 and the Pension Plan $100,000. The transfer to the Pension Plan is contingent on the Pension Plan's establishing an individual account benefit (a defined contribution benefit) for each participant under such plan and agreeing to accept funds to start the individual account program. The $200,000 transferred to the Welfare Plan will be considered by the Trustees (along with the Welfare Plan's other income) in assessing benefit improvements and benefit costs. The $100,000 transferred to the Pension Plan will not be allocated directly to the individual accounts but will be used to meet operating and start-up expenses, including the cost of a computer. First year operating and start-up expenses are each estimated at $40,000 to $50,000. Any portion of the $100,000 remaining after the first year will be used to defray operating expenses for subsequent years. In addition, the Welfare Plan and the Pension Plan will indemnify the Vacation Plan for any amounts needed to pay benefits to participants of the Vacation Plan who make a proper claim for benefits included in the $300,000 amount.

6. The proposed transfers are not specifically authorized by the documents establishing the Vacation Plan. However, Article Ten of the documents allows the Trustees to amend the Vacation Plan provided proper notice of the amendment is given to all of the Trustees, consent of three-quarters of the Trustees is obtained at two successive Trustee meetings, and the amendment does not contravene the purposes of the Plan. A resolution passed by the Trustees on September 8, 1982 permits the transfers of the uncommitted reserves pending the approval of this exemption by the Department.

[5] The uncommitted reserves represent an approximate amount of accrued vacation benefits, abandoned by certain participants for more than six years despite diligent efforts by the Trustees to locate the missing individuals.

7. In summary, it is represented that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) The transfers represent a one-time transfer of assets among the Plans which can be accomplished with little or no administrative complications; (b) the rights of Vacation Plan participants are protected by means of indemnification by the Welfare Plan and the Pension Plan for any future claims, rights and interests a Vacation Plan participant could enforce against the Vacation Plan due to the transfer of uncommitted assets; and (c) the Trustees have determined that the proposed transfers are in the best interests of the participants and beneficiaries of the Plans.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

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/or 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/or 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) Before an exemption may be granted under section 408(a) of the Act and/or 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

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of November, 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. 82-32572 Filed 11-29-82; 8:45 am]

BILLING CODE 4510-29-M

Wisconsin State Carpenters Pension Fund (the Fund), Located in Eau Claire, Wisconsin et al.; Grant of Individual Exemptions

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because,

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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 82–201; Exemption Application No. D–3080]

Wisconsin State Carpenters Pension Fund (the Fund), Located in Eau Claire, Wisconsin

Exemption

The restrictions of section 406(a) 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 (D) of the Code, shall not apply to the Loan of $225,000 by the Fund to William and Janice McKee (the McKees), provided that the terms and conditions of the loan are at least as favorable to the Fund as those it could obtain from an unrelated party; and the personal guarantee of repayment by the McKees.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 6, 1982 at 47 FR 34238.

Written Comments and Hearing Requests

The Department has received two comments on the proposed exemption. The first comment opposed the granting of the exemption unless public financing had first been sought by the borrower and also questioned the financial stability of McKee Associates, Inc.[1] The applicant represents that the Fund has retained an independent mortgage banker, Knutson Mortgage & Financial Corporation (Knutson), to receive, review and recommend to the Fund's Investment Committee (the Committee) permanent commercial mortgage financing opportunities. The McKees' application was presented and recommended by Knutson to the Committee. Based upon Knutson's recommendation and the Committee's finding that the McKees' application meets the Fund's mortgage criteria and represents a prudent and diversified investment addition to its mortgage portfolio, the Committee determined to invest in such mortgage.

The second comment stated that the interests of the Fund would be better served if the loan were made directly to the owner of a project, rather than a builder or developer. The applicant has represented that William McKee is in the fact, the owner, developer and builder of the property for which the mortgage is sought.

The Department has considered the entire record, including the two comments received, and has determined that the exemption should be granted as proposed.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82–202; Exemption Application Nos. D–3349 and D–3350]

The Guthrie Clinic, Ltd. Profit Sharing Plan and The Guthrie Clinic, Ltd. Revised Pension Plan (collectively, the Plans), Located in Sayre, Pennsylvania

Exemption

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 for a period of five years to the proposed loans (the Loans) of money by the Plans to Guthrie Clinic, Ltd., the sponsor of the Plans provided that the terms and conditions of the Loans are at least as favorable to the Plans as those which the Plans could receive in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 24, 1982 at 47 FR 42204.

Written Comments and Hearing Requests

One comment was received by the Department which was subsequently withdrawn.

For Further Information Contact: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

[Prohibited Transaction Exemption 82–203; Exemption Application No. D–3656]

The Richard L. Keith & Associates Profit Sharing Plan (the Plan), Located in Santa Rosa, California

Exemption

The restrictions of section 406(a), 406(b)(1) and (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 sale of a partnership interest in Hawake Limited by the Plan to Mr. Richard L. Keith (Mr. Keith) in exchange for Mr. Keith's note for $50,000, under the terms set forth in the notice of pendency, provided the terms of the transactions are not less favorable to the Plan than those obtainable in arm's-length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 15, 1982 at 47 FR 46178.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

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/or 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/or 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 or the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or 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

[1] The loan in this exemption is being made to the McKees and not to McKee Associates, Inc.

transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of November, 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. 82-32568 Filed 11-29-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-204; Exemption Application No. D-1428]

Exemption from the Prohibitions for Certain Transactions Involving The Sheboygan Clinic Employees' Profit Sharing Trust, Located in Sheboygan, Wisconsin

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individaul Exemption.

SUMMARY: This exemption permits the purchase of third mortgage registered bonds issued by the Clinic Building Company (Company), a wholly-owned affiliate of the Sheboygan Clinic (Clinic), by the participants' directed accounts of The Sheboygan Clinic Employees' Profit Sharing Trust (Plan) and the subsequent holding of such bonds by the Plan.

EFFECTIVE DATE: This exemption is effective July 1, 1975.

FOR FURTHER INFORMATION CONTACT: Dan O'Neil of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8368. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 3, 1982, notice was published in the **Federal Register** (47 FR 33571) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption form the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code, for the purchase of thrid mortgage registered bonds of the Company by the Plan and the subsequent holding of such bonds by the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invitd interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice to interested persons has been given as set forth in the Notice of Proposed Exemption. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include 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 or her 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) and 407(a) 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 purchase of third mortgage registered bonds issued by the Company, a wholly-owned affiliate of the Clinic, by the participants' directed accounts in the Plan and the subsequent holding of such bonds by the Plan.

The availability of this exemption is 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 exemption.

Signed at Washington, D.C., this 22nd day of November, 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. 82-32567 Filed 11-29-82; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the

proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Norman Frumkin, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

• Employment Standards Administration
Survey of Black Lung Beneficiaries
One-time survey
Individuals or households
3,990 responses; 1,197 hours; one form

This study to conduct interviews with a sample of Black Lung beneficiaries has been mandated by Congress in Section 203 of the Black Lung Benefits Revenue Act of 1981. The survey is designed to ascertain all sources of monetary and nonmonetary income of this respondent population.

Extension (Burden Change)

• Bureau of Labor Statistics
Log and Summary of Occupational Injuries and Illnesses/
Supplementary Record of Occupational Injuries and Illnesses
OSHA #200 and OSHA #101
On Occasion
Businesses or other institutions
Small business or organization
SIC: 52–89 except 52–54, 70, 75, 76, 79, and 80
4,850,000 responses; 479,000 hours; two forms

The OSH Act requires employers to prepare and maintain records of occupational injuries and illnesses. These records are necessary for carrying out the purposes of the Act. They assist OSHA in making inspections and investigations, provide the basis for a statistical program, and raise awareness of employees and employers in workplace hazards.

Signed at Washington, D.C., this 23rd day of November, 1982.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 82–32692 Filed 11–29–82; 8:45 am]

BILLING CODE 4510–27–M
BILLING CODE 4510–24–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

November 24, 1982

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on December 9, 1982 from 9:00 a.m. until 2:00 p.m.

The purpose of this meeting is to advise the Chairman of the National Endowment for the Humanities with respect to restrucing of programs for the Division of General Programs and possible changes in the Endowment's 1984 budget submission.

The meeting will be held in Room 1025 of the Shoreham Building, 806 15th Street, N.W., Washington, D.C. The first portion of the meeting discussing general policies regarding a new configuration for the Division of General Programs will be open to the public. The last portion of the meeting will not be open to the public pursuant to subsections (c)(2) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider matters that relate solely to the internal personnel rules and practices of the Endowment and consider information the disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted to me by the Chairman's Delegation of Authority dated January 15, 1978. Substantial issues concerning the Division of General Programs were raised at the November 1982 meeting of the National Council on the Humanities which resulted in a major review of the Division's programs. In addition, because the 1984 budget submission is due in early January, an immediate meeting was necessary. This meeting was scheduled on short notice on November 23, 1982. Accordingly, the normal 15-day notice period could not be provided.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, D.C. 20506, or call 202–724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–32651 Filed 11–29–82; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Economic Science; Subpanel on Decision and Management Science Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel on Decision and Management Science of the Advisory Panel for Social and Economic Science.

Date/Time: December 16, 1982—9:00 a.m. to 5:00 p.m. December 17, 1982—9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, N.W., Washington, DC 20550, December 16 and 17, Room 1224.

Contact Person: Dr. Trudi C. Miller, Acting Program Director, National Fundation, Room 312—Phone (202) 357-7569.

Purpose of Subpanel: To provide advice and recommendation concerning research in Decision and Management Science.

Agenda: Closed: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

November 24, 1982.

[FR Doc. 82–32595 Filed 11–29–82; 8:45 am]

BILLING CODE 7555–01–M

Schedule for Awarding Senior Executive Service Bonuses

Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding Senior Executive Service bonuses at least 14 days prior to the date on which the awards will be paid. The National Science Foundation intends to award Senior Executive Service bonuses for the performance rating cycle of September 1, 1981 through August 31, 1982, with payouts scheduled by December 20, 1982.

Dated: November 23, 1982.

Jeff Fenstermacher,

Director, Division of Personnel and Management.

[FR Doc. 82–32594 Filed 11–29–82; 8:45am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Electrical Systems; Meeting

The ACRS Subcommittee on Electrical Systems will hold a meeting on December 15, 1982 in Room 1046, at 1717 H Street, NW, Washington, DC. The Subcommittee will discuss the NRC-sponsored Safety Research Programs and the proposed budget for fiscal year 1984 and 1985 in the area of electrical systems.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, December 15, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.s.t.

Dated: November 24, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–32703 Filed 11–29–82; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittees on Reliability and Probabilistic Assessment and Extreme External Phenomena; Meeting

The Combined ACRS Subcommittees on Reliability and Probabilistic Assessment and Extreme External Phenomena will hold a meeting on December 15, 1982, Room 1167, at 1717 H Street, NW, Washington, DC. The Subcommittees will discuss the NRC-sponsored Safety Research Programs and the proposed budget for fiscal year 1984 and 1985 for those areas which are the responsibility of these Subcommittees.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

Wednesday, December 15, 1982—12:45 p.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding the topics to be discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., e.s.t.

Dated: November 24, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–32704 Filed 11–29–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–318]

Baltimore Gas & Electric Co.; Granting of Relief From ASME Section XI Inservice Inspection Requirements.

The U.S. Nuclear Regulatory Commission (the Commission) has granted a relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Baltimore Gas and Electric Company (the licensee), which revised the inservice inspection program for Calvert Cliffs Nuclear Power Plant, Unit No. 2. The ASME Code

requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The NRC has provided a relief from the ASME Boiler and Pressure Vessel Code, Section XI, regarding the hydrostatic test pressure requirement for two welds which cannot be isolated from the steam generator secondary side. These welds are part of a modification to the Unit 2 auxiliary feedwater system, to be performed during the Fall 1982, Unit 2, refueling outage. An acceptable, alternative, test method has been approved.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the licensee's request for relief from code requirements dated August 30, 1982 and (2) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C. 20555, and at the Calvert County Library, Prince Frederick, Maryland. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated this 19th day of November 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 82-32696 Filed 11-29-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

The Consumers Power Company (CPC) (the licensee) is the holder of Facility Operating License No. DPR-6 which authorizes operation of the Big Rock Point Plant located in Charlevoix County, Michigan, at steady state reactor core power levels not in excess of 240 megawatts thermal. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J was published on February 14, 1973 and in August 1975, each licensee was requested to review the extent to which its facility met the requirements.

By letters dated September 15, 1975, February 13, 1976, December 20, 1977, October 10, 1980, August 19, 1982, and October 12, 1982, CPC submitted its evaluation of the Big Rock Point Plant, in which it assessed compliance with the rule and also requested an exemption from certain requirements of the rule. In these submittals, CPC requested that certain test sequences and methodology, components, and penetrations be exempted from Appendix J requirements. The Franklin Research Center, a consultant to NRC, has reviewed the licensee's submittals and prepared a Technical Evaluation Report (TER) of its findings. The NRC staff has reviewed this TER and incorporated it in the enclosed Safety Evaluation Report.

The exemption requests found to be acceptable are as follows:

1. Section III.B of Appendix J describes the requirements for Type B tests. CPC requested an exemption from the requirements described in Section III.B because the design of the originally installed electrical penetrations, penetrations with expansion bellows and containment pressure instrument line seals at Big Rock Point, does not include provisions to permit specific Type B testing. CPC stated that these penetrations are tested as part of the integrated containment leak test, and no significant deficiencies have been detected in these penetrations. CPC also stated that these penetrations are inspected visually on an annual basis.

The staff has reviewed CPC's submittals regarding these penetrations. Based on the fact that experience indicates that there is little or no significant time-dependent increase in leakage through the electrical penetrations, the penetrations with bellows, or the containment pressure instrument line seals we have concluded that the intent of Appendix J will be satisfied if the electrical penetrations, penetrations with expansion bellows, and containment pressure instrument line seals are tested as part of the integrated containment leak rate test as specified in the Technical Specifications for Big Rock Point Plant. Therefore, the licensee's request for exemption from the requirements to perform Type B tests on the originally installed electrical penetrations, penetrations with expansion bellows, and containment pressure instrument line seals is acceptable.

2. CPC requested an exemption from Section III.C to allow them to perform hydraulic testing of the check valves in the control rod drive pump supply lines, in lieu of pneumatic testing. CPC provided an alternative method and information on the system volume and acceptable criteria for leak rates to demonstrate that the system remains sealed with water for 30 days after an accident.

The control rod drive supply lines are normally filled with water. CPC will perform a hydraulic test to demonstrate that the isolation check valves will remain sealed with water throughout the post-accident period. The licensee feels that periodic hydraulic testing provides adequate assurance that the escape of containment air will be precluded. The NRC staff has reviewed CPC's submittals relative to these isolation valves and concludes that the licensee's request for an exemption to allow hydraulic leak testing of the check valves in the control rod drive pump supply lines is acceptable.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption requests:

1. Exemption is granted from the requirements of Section III.B of Appendix J pertaining to Type B testing of electrical penetrations, penetrations with expansion bellows, and containment pressure instrument line seals. Type B tests will not be required for originally installed electrical penetrations, penetrations with expansion bellows and containment pressure instrument line seals. Testing of these penetrations as part of the integrated containment leak test is acceptable.

2. Expansion is granted from the requirements of Section III.C of Appendix J pertaining to Type C

pneumatic testing of the check valves in the control rod drive pump supply lines. The Type C testing of the check valves in the control rod drive pump supply lines can be performed by hydraulic testing at a pressure of 1.1 Pa, in lieu of pneumatic testing.

The NRC staff has determined that the granting of these exemptions will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Md., this 23d day of November 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-32697 Filed 11-29-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-36]

Negative Declaration Regarding Renewal of License No. SNM-33; Combustion Engineering, Inc., Nuclear Fuel Fabrication Plant, Hematite, Missouri

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License SNM-33 for the continued operation of the Nuclear Fuel Fabrication Plant at Hematite, Mo.

The Commission's Division of Fuel Cycle and Material Safety has prepared an environmental impact appraisal for the proposed renewal of license SNM-33. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of environmental impact statement and, accordingly, it has been determined that a Negative Declaration is appropriate. The environmental impact appraisal is available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland this 23rd day of November, 1982.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 82-32701 Filed 11-29-82; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued revisions to two regulatory guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 20, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Regulatory Guide 1.85, Revision 20, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. These two guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 522(a))

Dated at Silver Spring, Maryland, this 23rd day of November 1982.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-32700 Filed 11-29-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co.; Issuance of Amentment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 75 to Facility Operating License No. DPR-3 to Yankee Atomic Electric Company (the licensee) which revised the license and Technical Specifications for operation of Yankee Nuclear Power Station. Yankee is located in Franklin County, Massachusetts. The amendment is effective as of the date of its issuance.

The amendment approves Technical Specification which authorize an increase in the storage capacity of the spent fuel pit from 391 to 721 fuel assemblies. However, the amendment also incorporates a license condition which limits the capacity of the spent fuel pit to 391 fuel assemblies until seismic analyses for the new spent fuel racks have been reviewed and accepted by the Commission's staff.

The application for the amendment, as modified, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

The amendment is a part of the proposed action which is within the purview of the Notice of Proposed Issuance of Amendment to Facility Operating License published in the **Federal Register** on September 21, 1978 (43 FR 42825). A request for a hearing or a petition for leave to intervene was not filed following notice of the proposed action.

The Commission has issued an Environmental Impact Appraisal in connection with this approval and has concluded that an Environmental Impact Statement for this action is not warranted because the action will not significantly affect the quality of the human environment.

For further details with respect to this action see (1) the application for amendment dated July 13, 1978, the licensee's letters dated September 17, 1981 and July 28, 1982, and the licensee's

submittals identified in Section 1.0 of the Commission's related Safety Evaluation (SE), (2) Amendment No. 75 to License No. DPR–3, and (3) the Commission's related Environmental Impact Appraisal and SE. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of November, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82–32698 Filed 11–29–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–29]

Yankee Atomic Electric Company, Yankee Nuclear Power Station; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 76 to Facility Operating License No. DPR–3, issued to Yankee Atomic Electric Company (the licensee), which revises the Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee) (the facility) located in Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to allow a change in the minimum permissible flow rates in the shutdown cooling system during Mode 6 operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 15, 1982, as supplemented by letter dated October 29, 1982, (2) Amendment No. 76 to License No. DPR–3 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of November 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82–32699 Filed 11–29–82; 8:45 am]

BILLING CODE 7590–01–M

[ASLBP Docket No. 78–365–010L; Docket Nos. 50–361–0L, 50–362–0L]

Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 and 3); Order Suspending Evidentiary Hearing

November 24, 1982.

This Board's Memorandum and Order of October 5, 1982 certified to the Commission the question whether we should proceed with an evidentiary hearing on the medical arrangements question or suspend that hearing until the Commission decides the certified questions pending before it. By Memorandum and Order dated November 19, 1982, the Commission has by a divided vote directed us to suspend the hearing.

The evidentiary hearing previously scheduled for January 11, 1982, and the filing dates associated therewith, are suspended pending further order.

Dated at Bethesda, Maryland, this 24th day of November, 1982.

For the Atomic Safety and Licensing Board.

James L. Kelley,

Chairman, Administrative Judge.

[FR Doc. 82–32702 Filed 11–29–82; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of adoption and distribution of final program.

SUMMARY: On November 15, 1982, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") adopted its Columbia River Basin Fish and Wildlife Program. This notice describes how to obtain copies of the program.

The program will be distributed to all entities which submitted program recommendations,the Council's Fish and Wildlife Subcommittee of its Scientific and Statistical Advisory Committee and all individuals and interests who requested a copy of the draft program.

Copies of the program also will be made available to members of the Forecasting, Conservation, Reserves and Reliability and Resource Assessment Subcommittees of the Council's Scientific and Statistical Advisory Committee.

ADDRESSES: Those individuals and organizations who did not request the draft fish and wildlife program but who wish to receive a copy of the final program should contact Ms. Janie Pearcy by writing her at the Council's Central Office, Suite 200, 700 S.W. Taylor Street, Portland, Oreg. 97205, or by calling Ms. Pearcy at (toll free) 1–800–547–0134 in Montana, Idaho, Washington and California. In Oregon, call (toll free) 1–800–452–2324. In all other states, call (503) 222–5161.

Each organization or individual will receive one copy of the final program free of charge. There will be a charge of nine dollars for each additional copy.

The fish and wildlife program will be available for inspection and copying at the Council's Central Office Public Reading Room, Suite 200, 700 S.W. Taylor Street, Portland, Oregon, 97205, on weekdays between 8:30 a.m. and 4:30 p.m.

Copies of the program also will be available for public inspection and copying at the Council's state offices on weekdays between 8:30 a.m. and 4:30 p.m.

Council State Offices

1. Old Board of Health Building, 1301 Lockey, Helena, Mont.

2. Towers Building, 3rd Floor, Boise, Idaho.

3. 155 Cottage Street NE, Salem, Oreg.

4. Washington State Energy Office, 400 East Union, Olympia, Wash.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, (toll free) 1–800–547–0134 in Montana, Idaho, Washington, and California, (toll free) 1–800–452–2324 in Oregon. In all other states call (503) 222–5161.

SUPPLEMENTARY INFORMATION: By passage of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, 94 2697, 16 U.S.C. 839 et seq. ("the Act"), Congress provided for the establishment of the Pacific Northwest Electric Power and Conservation Planning Council ("the Council"), a regional agency composed of two gubernatorial appointees each from the states of Idaho, Montana, Oregon, and Washington. Congress charged the Council with two major responsibilities: (1) Preparation of a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development, operation, and management of hydroelectric facilities on the Columbia River and its tributaries; and (2) Development of a conservation and electric power plan for the Pacific Northwest.

The Council must adopt its fish and wildlife program first and thereafter incorporate that program into its conservation and electric power plan.

As required by the Act, the Council initiated the statutory process for development of its fish and wildlife program by adopting a motion on June 10, 1981 asking for recommendations for (1) Measures which can be expected to be implemented by the Bonneville Power Administration and other federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of hydroelectric facilities on the Columbia River and its tributaries; (2) Objectives for the development and operation of hydroelectric facilities on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish wildlife; and (3) Fish and Wildlife management coordination, research, and development activities, including funding, which would assist protection, mitigation, and enhancement of anadromous fish at and between the region's hydroelectric dams. The Council asked for submission of such recommendations by November 15, 1981.

By November 15, 1981 the Council received more than 2,200 pages of recommendations and related documents. It distributed those materials throughout the region in sets of four "blue books." On January 11, 1982, it opened a public comment period on the recommendations which ran through April 1, 1982. Public hearings were held in Boise, Idaho; Missoula, Mont.; Portland, Oreg.; and the Yakima Indian Reservation at Toppenish, Wash.

The recommendations formed the basis of extensive informal and formal consultations with state and federal fish and wildlife agencies, the Bonneville Power Administration, federal operating agencies, Indian tribes, utilities and public interest groups.

On September 16, 1982, in a public meeting in Helena, Mont., the Council approved release of a proposed draft fish and wildlife program. Over 2,300 copies of the draft program were distributed without charge to Indian tribes, state and federal fish and wildlife agencies, federal operating agencies, public interest groups and interested individuals.

The Council conducted detailed consultation sessions and briefings on the proposed program. Public hearings on the draft program were held in Montana, Idaho, Washington, and Oregon. The four days of hearings produced 1,481 pages of testimony. The public comment period on the proposed plan extended from September 16 until October 25, 1982. Approximately 5,000 pages of written comments on the proposed program were received from 600 agencies, Indian tribes, utilities, public interest organizations and members of the public.

The Columbia River Basin Fish and Wildlife Program adopted by the Council addresses: the goals of the program, problems associated with downstream migration, ocean survival and upstream migration of anadromous fish; wild, natural and hatchery propagation of fish; protection of resident fish; enhancement of the fishery in the Yakima Basin; wildlife; establishment of a fish and wildlife committee; future hydroelectric development and coordination of river operations.

Each section of the program includes a summary of the problem(s) addressed, recommendations for solving the problem, the Council's response to those recommendations and the program measure adopted by the Council. The program also includes a glossary to aid in understanding technical terms used in the program, a disclaimer section, and appendices explaining how the Council disposed of program recommendations and responded to comments on the draft program.

The program is to be implemented by Federal agencies which own, operate or regulate hydroelectric facilities in the Columbia River Basin. Those agencies include the Bonneville Power administration and the Federal Energy Regulatory Commission in the U.S. Department of Energy; the Corps of Engineers, U.S. Department of the Army; and the Bureau of Reclamation, U.S. Department of Interior. The program will be funded primarily through hydroelectric power rates.

Copies of the program may be ordered by writing to Ms. Janie Pearcy at the Council's Central Office at 700 S.W. Taylor Street, Suite 200, Portland, Oregon, 97205, or by calling Ms. Pearcy at (toll free) 1–800–547–0134 in Montana, Idaho, Washington and California or (toll free) 1–800–452–2324 in Oregon. From other states, call (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 82–32589 Filed 11–29–82; 8:45 am]

BILLING CODE 0000–00–M

Reserves and Reliability Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting date and time correction.

SUMMARY: The scheduled meeting on Tuesday, November 30, 1982 at 9:15 a.m. of the Reserves and Reliability Subcommittee of the Scientific and Statistical Advisory Committee, published in the **Federal Register** November 26, 1982 (47 FR 53539), has been changed to Monday, November 29, 1982 at 11:00 a.m. All other information contained in the November 26 meeting notice remains the same.

Edward Sheets,

Executive Director.

[FR Doc. 82–32588 Filed 11–29–82; 8:45 am]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

Notice of Visit

November 23, 1982.

Notice is hereby given that Chairman Steiger, Vice Chairman Folsom, Commissioner Crutcher and members of the advisory staff will visit Mail Processing Systems, Inc., 131 Founders Plaza, East Hartford, CN, on Thursday, December 2, 1982, for the purpose of gaining general knowledge and understanding of a pre-sort mailing

operation of first-class letter mail. A report of the visit will be filed in the Commission's Docket Room.

David F. Harris,

Secretary.

[FR Doc. 82-32565 Filed 11-29-82; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 19263; File No. SR-Amex-81-20]

CIC American Stock Exchange Co.; Self-Regulatory Organization, Amendment to and Order Approving Proposed Rule Change

In the Matter of; American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006.

November 22, 1982.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), and Rule 19b-4 thereunder, the American Stock Exchange, Inc. ("Amex") has filed with the Commission a proposed rule change to accommodate the listing and trading of standardized put and call options contracts on certificates of deposit ("options on CDs").[1] The Amex has provided the Commission with the contract specifications, sales practice provisions, floor procedures and surveillance techniques that will govern the trading of CD options.

II. Uses of CD Options

In its submission, the exchange asserts that standardized exchange-traded put and call options on CDs would serve a number of important economic functions.[2] In particular, the amex believes that, since CDs and closely related commercial paper are the most widely used short-term commercial debt instruments, CD options would be particularly useful for hedging returns on investment as well as the costs of borrowing short-term funds.[3] Thus, the exchange believes that CD options could be used by a wide range of individuals and companies engaging in interest rate sensitive businesses to hedge the risks associated with adverse interest rate movements, while at the same time retaining the opportunity to profit from favorable movements.[4]

CD options also could be attractive for speculators and arbitrageurs. For example, options purchasers can profit on a leveraged basis from favorable movements in interest rates, while at the same time limiting their exposure to the amount of premium paid. Moreover, Amex anticipates that arbitrage trading would develop involving options positions and positions in different debt-related instruments (such as CDs themselves, CD futures, short-term Treasury securities and derivative Treasury instruments). Of course, since options are wasting assets of limited duration, an investor engaged in speculative activity involving CD options stands to lose his entire investment in a short period of time. For this reason, the Commission has requested, and the exchanges have provided in the debt options disclosure document, disclosure of the special risks of debt options.[5] In addition, as discussed below, the exchange has proposed rules relating to CD options related to account approval, supervision and sales practices to ensure that trading will occur within a well-ordered regulatory environment.

III. Contract Specifications

To accommodate trading of CD options, Amex's proposed rule change includes general enabling rules that authorize the listing of standardized options contracts on negotiable certificates of deposit issued by the most creditworthy U.S. domiciled banks, known as "top-tier" banks,[6] whose CDs are traded interchangeably on a "no-name" basis.[7] Because CDs with varying original and remaining terms to maturity issued by top-tier banks are interchangeably accepted as good delivery in the CD cash market, the proposed rule change also would authorize options on the basis of a "market basket" type of delivery system.[8]

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[1] Amex's CD option proposal initially was filed on November 12, 1981 and was amended on May 24, 1982 and on November 17, 1982. Notice of the filing and first amendment was given by the Commission in Securities Exchange Act Release Nos. 18267 (November 17, 1981) and 19173 (October 25, 1982) and by publication in the **Federal Register** (46 FR 57809 (November 25, 1981), and (47 FR 49910 (November 3, 1982), respectively). *See* File No. SR-Amex-81-20. Since the amendments largely propose techical amendments to the initial filing, and since public comment on the subjects covered in the amendments already has been solicited, the Commission believes there is good cause for approval of the proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof. *See* p. 14 *infra.*

Concerns of the commentators regarding the commission's jurisdiction to approve the trading of CD options have been resolved by enactment of Public Law No. 97-303 which amends Sections 3(a)(10) and 9 of the Act to make clear that options on CDs are "securities" over which the commission has the authority to regulate trading. *See also* Securities exchange Act Release No. 19125 (October 14, 1982), 47 FR 46934 (October 21, 1982), in which the Commission issued an order approving proposed rule changes relating to the trading of GNMA and Treasury options. The Commission beleives that the anlysis set forth in that release concerning the Commission's authority to regulate GNMA and Treasury options is equally applicable to CD options.

[2] Under Amex's proposed rule change, a "certificate of deposit" would be defined to mean "a negotiable instrument, having a denomination of $100,000 or more, issued by a bank at a fixed rate of interest for a fixed period of time, with both principal and interest payable at maturity." Amex Rule 900(b)(32).

[3] While options on Treasury bills, which the Commission recently has authorized Amex to trade, also can serve as an investment vehicle for hedging against adverse movements in short-term interest rates, amex believes that CD options may be particularly advantageous for investors with investments or obligations denominated in CDs or related instruments. Nevertheless, Amex believes that CD options would be complementary to Treasury bill options and would represent another component of its market for options on debt securities that focuses on instruments of relatively short terms to maturity.

[4] CD options also may be useful in situations in which futures on CDs would be inappropriate or less satisfactory. For example, options but not futures could be used by a market participant who wished to hedge against adverse interest rate movements but wanted to retain the opportunity to profit from favorable changes in interest rates. Likewise, options could be used to hedge more efficiently than futures against adverse interest rate changes in circumstances in which the size of the obligation or investment being hedged is not known in advance.

[5] *See* discussion *infra*, at 12.

[6] CD options would cover only those CDs issued by top-tier banks. Unlike the CD cash market, however, where top-tier banks are designated by informal understandings among dealers and their customers, the Options Clearing Corporation ("OCC") would designate which banks would be treated as top-tier for purposes of the CD options market. OCC's list of top-tier banks would be based on polls of CD dealers and would periodically be updated. A bank may be added to or dropped from the list at any time, effective immediately, at OCC's discretion. For a CD to be eligible for delivery against an exercised CD option, its issuer must have been included on OCC's top-tier list as of the date on which the option was exercised. *See* Amex Rule 982, Commentary .03(4). Amex anticipates that there usually would be about ten top-tier banks at a given time.

[7] The listing of any additional CD options classes, or any material change in the contract terms of an existing class, will constitute a proposed rule change under Section 19(b)(1) of the Act and must be filed with the Commission for approval. Such rule changes must set forth the material terms of the proposed contract, including identification of the specific CD security or securities underlying the contract (or the procedures used to identify deliverable CDs), the contract size and the expiration cycle.

[8] A "market basket" delivery system means that any of several eligible underlying securities of varying terms may be delivered in satisfaction of options exercises. The use of a market basket delivery system introduces an element of uncertainty and complexity into the options market, particularly for persons that must accept CDs upon the exercise of an options contract (*i.e.*, call holders and put writers). At the same time, because only small amounts of CDs are issued by any particular bank at specific rates at any given time, the Commission believes that a market basket delivery system is a virtual necessity for a viable options contract.

Amex has set forth in its filing the specific terms of the options contracts on which it proposes to begin trading. Each options contract would cover $1,000,000 principal amount of CDs,[9] which equals one round lot in the cash market. In conformity with the provisions relating to Treasury options, the Amex proposal would provide for the listing of CD options having up to five different expiration months at any one time, and options series would be traded on a March/June/September/December expiration cycle.[10] Options would expire the Saturday following the third Friday of the expiration month. Initial options series in each expiration month would be introduced at a complement of annualized yield reasonably close to the complement of annualized yield at which the underlying CD is traded in the primary market, additional series of options could be opened as the market price of CDs moved substantially from the initial exercise price.[11]

As a result of the market basket type delivery system, the stated exercise prices of CD options are purely nominal and must be adjusted. The actual exercise price payable upon exercise would depend not only on the coupon rate of the CD but also on the maturity dates of the CD delivered in settlement. To be deliverable in settlement of an exercised option, a CD must have an original term to maturity of not more than 185 days at time of issuance. In addition, the CDs must have a remaining term to maturity of three months and must mature in the same half-month period (i.e., the 1st through the 15th or the 16th through the last day of the month) as the exercise settlement date.[12] While exercise prices are expressed in terms of annualized (360 days) yield, CD options require delivery of CDs maturing in approximately three months. Thus, the exercise price must be adjusted to reflect the exact number of days remaining to maturity.

With respect to matters of contract design and delivery specifications, the Commission is not inclined to substitute its judgment for the business judgment of the self-regulatory organization unless it identifies serious regulatory concerns. Rather, the Commission believes the marketplace generally should be permitted to determine whether a particular contract meets the needs of market participants.[13]

The Commission, however, does maintain a regulatory interest in certain other terms of the proposed CD options contracts. These include the qualification of underlying CDs for options trading,[14] the establishment of position and exercise limits, and the imposition of margin requirements.

The Amex has proposed position and exercise limits that will prohibit any market participant, acting alone or in concert with others, from acquiring, or from exercising over a period of five consecutive business days, a position in excess of 250 contracts on the same side of the market.[15] While the potentially available deliverable supply of CDs cannot be determined precisely,[16] these position and exercise limits would permit individual market participants to acquire or exercise options positions that are generally equivalent to the percentage of deliverable supply the Commission has approved for other debt options contracts.[17] Accordingly, while the Commission believes that the CD options market must be scrupulously surveilled to assure that it is not subject to abuse, the Commission believes the proposed position and exercise limits should be sufficient to protect the options and related markets from disruption caused either by congestion or manipulation.

The Amex proposed rule change also contains revisions to its margin rules setting forth special margin requirements for CD options.[18] Specifically, no put or call option carried in a customer account is permitted to have loan value for the purpose of calculating margin, and accordingly, the premium must be paid in full.[19] For uncovered short positions, however, instead of calculating margin on the basis of value of the underlying security, Amex proposes to utilize a premium-based margin approach.[20] Margin would be set at 100 percent of premium plus 0.35 percent of the principal amount of underlying securities (*i.e.*, 0.35 percent of $1,000,000, or $3,500 per contract) minus the amount by which the options contract is out-of-the-money. Minimum margin would be $500; maximum margin would be 100 percent of premium plus $3,500.[21] Reduced margin would be provided for covered, spread and other hedged positions.[22]

The Commission has carefully examined the margin provisions proposed by Amex. As was stated in the Commission's Treasury Options Margin Release,[23] because long options

[9] Amex Rule 982, Commentary .03(2).

[10] Amex Rule 903(a)(i).

[11] Amex Rule 903(a)(ii). The term "annualized yield" in respect of CDs would mean "the yield at which a certificate of deposit may be purchased or sold, expressed as a yield for a term to maturity of 360 days." Amex Rule 900(b)(34). The term "complement," when used with reference to annualized yield, would be defined to mean "the difference between 100 percent and the annualized yield." Amex Rule 900(b)(35). Thus, if the current yield on no-name CDs was 9.25 percent, the complement of the yield would be 90.75 (100 minus 9.25). Amex might open options series with exercise prices of 90 and 92. In addition, exercise prices would be established at no more than two point intervals. Thus, as the yield of those CDs increased above 10 percent or fell below 8 percent, additional options series could be added at 88 and 94, respectively.

[12] *See* Amex Rule 982, Commentary .03(1) and (3). CDs with shorter maturities also may be delivered, but no adjustment to the exercise price received would be made to reflect the greater market value of a CD maturing in the earlier half-month. *Id.*

[13] *Accord*, Securities Exchange Act Release Nos. 17577 (February 26, 1981), at 607, 46 FR 15242 (March 4, 1981) (order approving the CBOE GNMA options proposal); 18371 (December 23, 1981), at 6–7, 46 FR 63423 (December 31, 1981) (order approving Treasury options proposals) (hereinafter "Treasury Options Release"); 19133 (October 14, 1982) at 4, 47 FR 46946 (October 21, 1982) (order approving foreign currency options proposal). In this regard, the Commission finds that the market basket delivery system developed by Amex appears designed to minimize regulatory concerns relating to such matters as customer confusion and uncertainty, and the Commission notes that such matters have been disclosed clearly and thoroughly in the debt options disclosure document.

[14] *See* notes 6–8 and 12 *supra* and accompanying text.

[15] *See* Amex Rules 904 and 905.

[16] *See* Federal Reserve Board ("FRB") statistical releases No. G.9 (410) (maturity distribution of outstanding negotiable time CDs at large commercial banks).

[17] For Treasury bill, note and bond options, the Commission approved exchange position and exercise limit rules designed to assure maximum positions of no more than approximately 10 percent of the deliverable supply. Based on information submitted by Amex and published by the FRB, it appears that the proposed CD options position and exercise limits also would allow individual market participants to establish or exercise options positions representing no more than 10 percent of the deliverable supply. Moreover, Amex has represented that it is possible the deliverable supply could be augmented on occasion by the issuance on request of additional CDs by one or more top-tier banks.

[18] *See* Rule 462. Amex Rule 462 absent amendments regarding CD options was approved by the Commission in Securities Exchange Act Release No. 19128 (October 14, 1982) 47 FR 46929 (October 21, 1982) (hereinafter "Treasury Options Margin Release"). Although options on CDs are securities under the Act, *see* note 1 *supra*, Regulation T of the FRB as currently drafted appears inapplicable to the Amex proposal. *See* 12 CFR § 220.8(j)(2). Therefore, the Amex proposed margin rule would govern both initial and maintenance margin to be posted by customers.

[19] *See* Rule 462(d)(2).

[20] A premium-based margin approach also was utilized for options on Treasury securities. *See* Treasury Options Margin Release, at 3–4.

[21] *See* Amex Rule 462(d)(2)(D)(iv)(4). Minimum margin could not be reduced below $100 for mini-contracts.

[22] The proposed modifications to exchange rules with respect to the margining of spreads and straddle positions in CD options generally consist of changes necessary to extend existing equity options rules to CD options. Rule 900(b)(23) would also be amended, so that the exemption from margin for fully covered short positons and reduced margin for partially covered short positons would apply in the case of options on CDs. *See also* Treasury Options Margin Release, at 4–5.

[23] *See* Treasury Options Margin Release, at 6–7.

positions have no loan value in a margin account, the premium must be paid in full. For margin on uncovered short positions, the Amex has developed a formula which it believes will result in margin deposits of sufficient size to provide adequate credit protection for member firms.[24] As was stated with respect to Treasury options, while the proposed margin formula in some cases yields an amount that covers less than 100 percent of the historic seven day price movements examined by the exchange,[25] the exchange believes that the formula nevertheless is appropriate. In particular, the exchange has stated that a formula designed to produce margin levels sufficient to cover 100 percent of historic price movements is both excessive and unnecessary. In support of this contention, the exchange indicates that in periods of significant price volatility, member firms could, and in fact would, require that margin deficiencies be eliminated in periods of less than seven days, and could, in the event a customer failed to do so, liquidate the customer's options position. Moreover, the exchange points to existing margin rules that would enable the exchange at any time to impose higher margin requirements than are prescribed by its rules when it deemed that higher margin requirements would be appropriate.[26]

In light of these considerations, the Commission believes that the proposed margin formula for uncovered short positions is appropriate. As with Treasury options, however, given the degree of financial leverage made possible by the proposed margin formula, the Commission remains concerned that unsophisticated and under-capitalized investors not be subjected to unreasonable risks of loss through transactions in CD options. In this regard, therefore, the Commission wishes to emphasize to both the exchanges and their member firms the need for rigorous application of exchange rules governing opening of accounts [27] and suitability [28] to ensure that market participants understand and are financially able to bear the risks of CD options trading.[29]

IV. Sales Practice Regulation

To govern the sales practices of member firms engaged in a public CD options business, the Amex has proposed a regulatory structure that generally parallels that adopted for equity options and that extends to CD options special provisions adopted for Treasury options.[30] Thus, the special customer protection procedures relating to supervision and testing, account approval, suitability and disclosure previously approved for Treasury options also would be applicable to members doing a public CD options business.[31] These specialized provisions are summarized below.

A. Supervision and Testing

In general, the proposed rule change would extend the supervisory procedures required of members engaging in a public equity options business to their public business in interest rate options, including CD options.[32] Each member organization, as a precondition to engaging in a public business in interest rate options (including CD options), must develop and implement a written program for the review of customer accounts and orders that is under the supervision of a Senior Registered Options Principal ("SROP"), who is a partner or officer of the firm.[33] Each member also must appoint a Compliance Registered Options Principal ("CROP") for interest rate options responsible for ensuring compliance with the securities laws and applicable exchange rules with respect to the firm's CD options business.[34] A third category of options principal, the Registered Options Principal ("ROP"), is responsible for direct supervision of registered representatives; the ROP's responsibility would include approving customer accounts for options trading and initialing all discretionary account orders.[35] In addition, the principal supervisor of any member firm branch office having more than three registered representatives trading interest rate options must be qualified as a ROP.[36] All SROPs, CROPs, and ROPs are required to qualify as options principals [37] and to complete successfully the Interest Rate Options Qualifications Examination ("IROQE").[38]

Each registered representative and all other personnel responsible for supervising the sale of CD options would be required to pass the IROQE.[39] Questions relating to CD options will be incorporated into that examination.

Member firms are allowed under the Amex provisions, if currently engaging in a public equity options business, to use the same supervisory structure for both equity and debt options, including CD options. Those firms intending to market CD options independently from equity options, however, would be required to develop a parallel supervisory structure. Upon introduction of the Amex Treasury options program, in order to allow Amex members an appropriate period to comply with applicable supervisory requirements, the Commission approved Amex rules establishing a temporary set of interim supervisory procedures.[40] These rules permit Amex to designate a single interest rate options principal, rather than having ROPs in every branch office with more than three interest rate options salespersons. These interim rules expire on April 22, 1983, after that date, the permanent rules described above become effective.

B. Disclosure

At or before the time a customer's account is approved for CD options trading, in addition to the basic OCC disclosure document, a member organization must deliver a copy of the appropriate supplement to that

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[24] The exchange has reached this conclusion by comparing the margin levels calculated pursuant to the proposed formula to the historic volatility of various Treasury securities underlying Treasury options over seven day periods, which is the maximum period of time permitted a customer under Reg. T to satisfy a deficiency in a margin account. 12 CFR 220.3(e). The exchange has represented that, while this volatility data applies to short-term Treasury securities—*i.e.*, 13- and 26-week Treasury bills—because of the close pricing relationship between Treasury bills and CDs, the results are generally applicable to CDs as well.

[25] *See* Treasury Options Margin Release, at 7. The Treasury securities volatility studies completed by the exchange indicate that, based on recent price changes, the proposed margin formula would cover approximately 90 percent of the seven-day price movements for the CDs underlying the proposed options contracts.

[26] *See* Amex Rule 462(d)(2)(K).

[27] Amex Rule 921.

[28] Amex Rule 923.

[29] *Accord*, Treasury Options Margin Release, at 8. The Commission also notes that these risks are prominently disclosed in the debt options disclosure document.

[30] *See* Treasury Options Release, at 11–14. *See generally* Securities Exchange Act Release Nos. 16696 and 16701 (March 26, 1980) and 16807 (May 5, 1980).

[31] *See* Treasury Options Release, at 11–14.

[32] *See* Amex Rule 922.

[33] *See* Amex Rule 922(a)(iii). The SROP also is responsible for reviewing the acceptance of discretionary trading accounts by the firm.

[34] Amex Rule 922(a)(iv).

[35] *See* Amex Rules 920(a), 921(a) and 924(a).

[36] *See* Amex Rule 922(c). For those members with branch offices consisting of three or fewer registered representatives engaging in a public business in interest rate options, the provisions require that the activities of the branch office be appropriately supervised by a ROP.

[37] To qualify, the person normally must successfully complete the Registered Options Principal Examination administered by the NASD. This examination tests knowledge of options trading generally and of applicable exchange and OCC rules.

[38] *See* Amex Rule 920, Commentary .01. This examination tests a person's knowledge of both the debt options market and the market for the underlying securities.

[39] *Id.*

[40] *See* Amex Rule 922A.

document.[41] On October 18, 1982, the Commission authorized distribution of the supplemental disclosure document regarding listed options on debt securities, including CDs.[42] Therefore, it is available for distribution once trading in CD is authorized to commence.

V. Floor Procedures

In substantially all important respects, the current Amex rules applicable to the trading of Treasury options would be equally applicable to the trading of CD options. For example, Amex intends to trade CD options by utilizing both specialists and supplemental market makers, known as Registered Options Traders ("ROTs"), and these specialists and ROTs will be obligated with respect to CD options trading to abide by the same fair and orderly market obligations applicable to Treasury and equity options trading.[43] Spread limits and continuity requirements applicable to ROTs trading Treasury options, therefore, also would apply to ROTs trading CD options.[44]

VI. Surveillance

Section 6(b)(5) of the Act requires an exchange to have rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to comply, and to enforce compliance by its members and associated persons, with the provisions of the Act and the rules therunder and with the rules of the exchange. Accordingly, an exchange has an obligation to develop and administer a comprehensive surveillance program designed to detect manipulation and other improper trading activities.

Due to the limited availability of timely and independently verifiable transaction, quotation and position information with regard to activities in related markets, the exchange has indicated that inter-market surveillance techniques for options on CD securities will differ somewhat from those currently employed for equity options.[45] A principal purpose of inter-market surveillance is the protection of the options market's integrity by maintaining a capacity to detect and deter the manipulation of options prices resulting from trading in related markets. In addition, there is a need for rigorous surveillance as a deterrent to the possible disruptive effect of CD options on the underlying cash market. To address these concerns, the Amex has imposed reporting and recordkeeping requirements that will enable the exchange to identify situations potentially susceptible to manipulation,[46] as well as proposed rules enabling the exchange in the course of an investigation to obtain access to the books and records maintained by corporate affiliates of CD options specialists or ROTs relating to transactions in CDs, CD options, futures on CDs and options on CD futures.[47] The Commission believes that the data made available by these rules, if effectively utilized by the exchange, will minimize the potential for manipulation.

Prior to commencement of trading, however, the Amex must make the necessary revisions to its surveillance manual regarding options trading on debt securities, including CD options, and must submit its updated surveillance manual to the Commission for review.

VII. Findings and Conclusion

Under Section 19(b)(2) of the Act, the Commission must approve the foregoing rule change if it determines that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to national securities exchanges. The Commission has reviewed carefully the rules proposed by the Amex to accommodate the listing and trading of options on CDs and has concluded, for the reasons set forth above, that the rules provide for the adequate and proper regulation of the proposed market. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6 and the rules and regulations thereunder. Prior to the commencement of trading, however, the Amex must submit for Commission review surveillance procedures for CD options trading. In addition, OCC rules regarding clearance, settlement and related matters for CD options must be approved by the Commission. The Commission finds good cause to approve, prior to the thirtieth day after publication of notice, the most recent amendments submitted by the Amex, since those amendments relate to matters that are technical in nature to accommodate CD options trading or with respect to which public comments already have been solicited.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change, as amended, be, and hereby is, approved.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

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[Release No. 19264; File No. SR-Amex-82-8 etc.]

American Stock Exchange, Inc., et al.; Self-Regulatory Organizations; Order Approving Proposed Rule Changes

In the Matter of: American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006; Chicago Board Options Exchange, Inc., LaSalle at Jackson, Chicago, IL 60604; New York Stock Exchange, Inc., 11 Wall Street, New York, NY 10005; File Nos. SR-Amex-82-8, SR-CBOE-82-11, SR-NYSE-82-2.

November 22, 1982.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act"), and Rule 19b-4 thereunder, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Incorporated ("CBOE"), and the New York Stock Exchange, Inc. ("NYSE") have filed with the Commission proposed rule changes to modify their rules to accommodate the listing and trading of standardized put and call option contracts on various stock indices.[1] The exchanges also have

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[41] Amex Rule 926. *See* Rule 9b-1(d) of the Act.

[42] *See* Securities Exchange Act Release No. 19154 (October 18, 1982) 47 FR 49123 (October 29, 1982).

[43] Amex Rule 958.

[44] *Id.*

[45] With respect to intra-market surveillance, the exchange's techniques for monitoring trading in CD options generally will be similar to the procedures currently utilized for options on equity securities.

[46] Each member organization will be required to file with the exchange reports of any member firm account or any customer account with an aggregate options position on the same side of the market with respect to any underlying CD which is equal to or in excess of 10 percent of the applicable position limit. Amex Rule 906. In addition, specialists and supplemental market makers on Amex will be required to submit to the exchange and keep current a list of all accounts maintained in which they engage in trading activity or over which they exercise investment discretion, and submit daily reports of all positions and transactions effected in such accounts with respect to, options on CDs, CDs underlying such options, CD futures contracts which permit delivery of the underlying security, and any options on CD futures contracts. *See* Amex Rules 950(1), Commentary .01 and .02, and 957 (a) and (b).

[47] Amex Rule 957(c).

[1] Amex filed proposed rule changes to trade options on broadbased or "market" indices and narrow-based or "sector" and "industry" stock indices on May 25, 1982. Amendment No. 1 was filed on November 1, 1982. Notice of the proposed rule change and the amendment was given by Securities Exchange Act Release Nos. 18824 (June 21, 1982) and 19218 (November 8, 1982), and by publication in the **Federal Register** (47 FR 28126

designated the specific indices on which they propose initially to commence options trading.[2]

Upon the Commission's publication of the initial stock index options proposals, filed by the Amex and NYSE, two significant concerns were expressed with respect to stock index options. First, two boards of trade commented that, in light of the decision by the Court of Appeals for the Seventh Circuit in *Board of Trade of the City of Chicago* v. *Securities and Exchange Commission, et al,*[3] the Commission did not have the authority to approve proposed rule changes to enable national securities exchanges to list and trade options on stock indices.[4] Second, concerns were expressed that the cash settlement provisions of the proposals might conflict with state gaming laws. The legal uncertainties with respect to both issues have been clarified, however, by the recent enactment of legislation amending the federal securities laws.[5]

II. Contract Description

To accommodate the trading of options on stock indices each exchange has submitted general enabling rules which authorize the listing of options on stock indices and information with respect to the index or indices on which they propose to initiate stock index options trading. In addition, NYSE, which has not previously traded options, has submitted extensive rules to provide for the regulation of options floor trading activity.

A. Composition of Indices

Each of the exchanges proposes to trade options on both broad-based or "market" indices and narrow-based "sector" or "industry" indices. Moreover, each exchange has submitted for Commission review information concerning the index or indices on which it proposes initially to commence stock index options trading.[6] NYSE proposes to initiate stock index options trading on the NYSE Composite Index and the four existing NYSE sector indices (the NYSE Financial Index, NYSE Industrial Index, NYSE Transportation Index and the NYSE Utility (Index). Amex proposes to trade an option on the Amex Market Value Index ("Amex Index"). Finally, CBOE proposes to trade an option on a market index which it will begin computing and publishing called the CBOE 100 Stock Index ("CBOE 100 Index").

The approximate aggregate dollar value of the contracts varies substantially. Each contract, however, is calculated using the same basic formula: the aggregate principal amount of the contract equals the index value (or 10 percent of the index value in the case of Amex) times an unvarying multiplier established by the exchange. For example, the NYSE established a $100 index multiplier which, based on current index valuations, will result in aggregate contract values of approximately $8,000 for the NYSE Composite Index option and amounts higher or lower corresponding to the NYSE sector indices values. CBOE, using the same formula and a $500 multiplier, will offer options on indices with a total current value of approximately $30,000. Although Amex has established a $100 multiplier, the current aggregate contract size of the Amex Index option will be

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(June 29, 1982) and 47 FR 51249 (November 12, 1982)). *See* File No. SR–Amex–82–8.

The CBOE proposed rule changes providing for the listing and trading of options on stock indices were filed on October 14, 1982. Amendment No. 1 was filed on November 1, 1982. Notice of the proposed rule change and the amendment was given by Securities Exchange Release Nos. 19172 (October 25, 1982) and 19219 (November 8, 1982), and by publication in the **Federal Register** (47 FR 49512 (November 1, 1982) and 47 FR 51251 (November 12, 1982)). *See* File No. SR–CBOE–82–11.

The NYSE proposed rule change to accommodate the listing and trading of options on stock indices was filed on February 8, 1982. Amendment Nos. 1, 2 and 3 were filed, respectively, on April 9, 1982, June 10, 1982, and October 18, 1982. Notice of the proposed rule change and the amendments was given by Securities Exchange Act Release Nos. 18492 (February 17, 1982), 18702 (April 30, 1982), 19216 (November 8, 1982) and 19217 (November 8, 1982), and by publication in the **Federal Register** (47 FR 8113 (February 24, 1982), 47 FR 20239 (May 11, 1982), 47 FR 51254 (November 12, 1982), and 47 FR 51255 (November 12, 1982)) *See* File No. SR–NYSE–82–2.

The most recent sets of amendments submitted by each exchange provide for rules and regulations with respect to index dissemination, position limits, reporting requirements, and trading halts intended to reflect identical or substantially similar proposed rules filed previously by either one or both of the other exchanges. Because these amendments concern matters with respect to which public comments have been solicited previously the Division believes there is good cause to approve the proposals, as amended, prior to the thirtieth day after publication of notice of the amendments.

[2] The NYSE proposes to trade options on the following five NYSE indices: (i) The NYSE Composite Index; (ii) the NYSE Industrial Index; (ii) the NYSE Financial Index; (iv) the NYSE Utility Index; and (v) the NYSE Transportation Index. The CBOE has proposed to trade an option based on a new market index, the CBOE 100 Stock Index (the "CBOE 100 Index"). The Amex proposes to trade an option on the Amex Market Value Index (the "Amex Index"). Information submitted by the exchanges concerning the specific indices on which they propose to commence trading is deemed to be incorporated into their proposed rule changes.

[3] 677 f.2e 1137 (7th Cir. 1982) (hereinafter, "*CBT I*" decision).

[4] *See* comment letters from John H. Stassen on behalf of Robert K. Wilmouth, President, Chicago Board of Trade ("CBT"), to George A. Fitzsimmons, Secretary, SEC (May 28, 1982 and July 26, 1982).

See comment letter from Clayton Yeutter, President, Chicago Mercantile Exchange ("CME"), to George A. Fitzsimmons, Secretary, SEC (April 9, 1982).

[5] In *CBT I*, the Seventh Circuit Court of Appeals set aside two Commission orders approving proposed rule changes to accomodate exchange trading of options on Government National Mortgage Association pass-through securities ("GNMA options") on the grounds that the Commission lacked regulatory authority under the federal securities laws to regulate trading in GNMA options and that exclusive jurisdiction over such options rested with the Commodity Futures Trading Commission ("CFTC"). 677 F.2d at 1137.

Thereafter, Congress enacted legislation which codified the proposed federal securities laws amendments contained in the jurisdictional accord reached by the Commission and the CFTC (the "Accord"). H.R. 6156, "An Act to clarify the jurisdiction of the Securities and Exchange Commission and the definition of security, and for other purposes," became law on October 13, 1982. *See* Pub. L. 97–303, §§1–7, 96 Stat. 1409 (amending 15 U.S.C. 77b(1), 78c(a)(10), 78i, 78bb(a), 80a–2(a)(36), 80b–2(a)(18), 78111(14).

Among other things, the legislation clarified that the Commission has jurisdiction over put and call options on groups or indices of securities. Legislation is currently pending which would amend the Commodity Exchange Act ("CEA") to clarify that the CFTC has jurisdiction over futures contracts on broad-based indices of securities, as well as over options on those futures.

The amendments also preempted the application of state gaming laws to the trading and settlement of any option traded pursuant to the rules of a self-regulatory organization. Therefore, although Congress did not enact legislation implementing the portion of the Accord which would amend the CEA, the legislation as enacted enables the Commission to authorize the trading on national securities exchanges of options on stock indices settled in cash.

On October 14, 1982, the Commission issued orders approving proposed rule changes relating to the trading, clearing and settling of options on Treasury and GNMA securities and foreign currencies. *See generally* Securities Exchange Act Release Nos. 19125–19134 (October 14, 1982), 47 FR 46934–50 (October 21, 1982). These Commission orders were challenged in *Board of Trade of the City of Chicago* v. *Securities and Exchange Commission*, No. 82–2459 (filed October 15, 1982) ("*CBT IV*") in which the CBT requested an emergency stay of trading of options on GNMA and Treasury securities pending the review of the Commission's orders. On October 20, 1982, the Seventh Circuit denied the CBT's motion.

Further, on October 21, 1982, the Seventh Circuit denied *en banc* the CBT's emergency petition for reconsideration of the previously denied stay motion, stating "It is ordered that because H.R. 6156 grants the Securities and Exchange Commission jurisdiction under the Securities laws to authorize options on government securities, said motion is hereby denied."

[6] The exchange's submissions include information concerning the securities comprised by the indices, the formula for calculating the index, the "base value of the index," the index multiplier (the dollar amount by which the index value is multiplied to determine the aggregate option exercise price), and exchange guidelines for daily adjustment of the index. Each index that will underlie an options contract must be reviewed separately as a proposed rule change pursuant to Rule 19b–4 under the Act before trading in an option based on that index may commence. As noted previously, the information concerning the specific indices on which the exchanges propose to commence trading is incorporated into their proposed rule changes. The exchanges would have to submit additional proposed rule changes in the future should they seek to trade options on additional stock indices.

approximately $3,000 because, as noted above, the index value for the purposes of stock index option calculation is 10 percent of the actual value of the index.

The exchanges propose that the stock index options, when exercised, be settled by the delivery of cash rather than securities. Because an option on a stock index reflects a large number of stocks and includes fractional shares, the delivery of securities upon exercise is neither practical nor desirable. The Commission believes that these proposed rules, which would obligate a writer of an option receiving an exercise notice to settle the option by the payment of cash, are both desirable as practical settlement procedures and appropriate in light of recent amendments to the federal securities laws.

B. Contract Design

With respect to matters of contract design and size, the Commission has in the past stated that, so long as it has no regulatory concerns, it is not inclined to substitute its judgment for the business judgment of the self-regulatory organizations. Nevertheless, the Commission does maintain a regulatory interest in the indices themselves and, as noted previously,[7] will review all indices prior to the commencement of options trading upon them regarding: (i) The composition and calculation of the index; (ii) the procedures for adjusting the index to reflect corporate mergers, liquidations and tender offers, as well as stock dividends and stock splits and any other events which affect the trading of, or the weighted value of, one or more stocks in the index; (iii) the provisions for ensuring that the index will be widely-disseminated to the public on a timely basis.

The three exchanges have submitted their index equations to the Commission and have indicated that this information is or will be available to the public by publication or upon request. Moreover, Amex and NYSE currently make, and CBOE proposes to make, daily adjustments in the indices to reflect capitalization changes which occur as a result of delistings, mergers, liquidations or new listings. In addition, adjustments for share capitalization changes as a result of stock splits and stock dividends will be made daily. In addition, the exchanges propose to calculate and disseminate their indices frequently.[8]

The Commission believes that these measures are necessary to assure market efficiency and market integrity.

C. Multiple Trading

Each of the three exchanges has proposed to trade options on a different index, and, therefore the issue of multiple trading of stock index options has not been directly raised by any of the proposals. In addition, none of the comment letters received by the Commission has raised concerns in this area. Nevertheless, the Commission believes it appropriate to offer some guidance in this area at this time.

As a general matter, the Commission believes that the issues involved with respect to multiple trading of stock indices are substantially similar to those involved in the multiple trading of other nonequity options.[9] First, the Commission believes that the market, rather than the Commission, should make allocation decisions regarding stock index options. Unrestricted competition among exchanges is most likely to encourage innovation and result in the development of options contracts best suited to the economic needs of market participants.

Second, the potential adverse economic consequences of multiple trading to certain of the exchanges that have been asserted in the equity options context are not present here. Unlike stock options, no options market has committed significant resources to the creation of a stock index options market on the basis of an exclusive franchise; nor is any exchange currently heavily dependent upon stock index options as a vital source of income.

Finally, the Commission does not believe that it should be engaged in the process of determining when a stock index product is sufficiently different from existing products so as to raise a multiple trading issue.[11] For the foregoing reasons, the Commission is inclined to extend its policy of permitting multiple trading of non-equity options to stock index options.

IV. Economic Uses of Options on Stock Indices

In their submissions, the exchanges have asserted that exhange-traded put and call options on stock indices would serve several important economic functions. In particular, the exchanges believe that such options could be used by a wide range of investors or investment advisers holding or managing stock portfolios. In addition, underwriters and other persons and entities sensitive to changes in stock prices, particularly short-term changes, generally could benefit from the use of stock index options.

First, the proposed stock index options could be used by portfolio managers, such as pension fund managers, to hedge stock portfolio positions. Hedging a diversified equity portfolio by the purchase and sale of stock index options is the most readily perceived use of the proposed stock index option. The purchase of a put option or sale of a call to offset expected bearish market performance offers protection from market or systematic risk to those who maintain positions in equity securities.[12] Potential losses in value to the portfolio could be offset by increases in the value of the put option (or premium income generated from writing the call option).[13]

Long call positions could be used as an anticipatory hedge. In particular, a portfolio manager could use the proposed stock index options to "lock in" current market prices in a bullish market in anticipation of expected cash flows and the purchase of a diversified but indeterminate group of securities.[14] Similarly, a portfolio manager could derive premium income from a short put position in stock index option if sold in anticipation of a bullish market.

Second, the proposed options based on broad-based or market indices would provide a vehicle for hedging against the general market risks associated with holding a position in an individual stock. Certain of the price moves of individual

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[7] *See* footnote 6, *supra*.

[8] Amex and CBOE have agreed to provide for the dissemination of their indices once a minute through securities information vendors; the NYSE indices are currently disseminated as they are dynamically updated. The Commission qualifies the approval of the CBOE 100 stock index option on the following two conditions: (i) to familiarize public market participants with the new CBOE 100 Index and to develop public order flow, the CBOE will provide for the publication of its index in newspapers of national distribution; and (ii) the CBOE will provide for the wide dissemination of the index through contract agreements with major securities information vendors. The Commission believes that such frequent public dissemination, like public disclosure of the formula and procedures for calculating the index, is a necessary element of any exchange proposal to trade stock index options.

[9] *See* Multiple Trading of Non-Equity Options Policy Statement, Securities Exchange Act Release No. 18297 (December 2, 1981), 46 FR 60376 (December 9, 1981).

[11] In this regard, it would be asserted that two or more exchange proposals to trade options on similar, but not identical, indices would constitute multiple trading. The difficulty of applying such an analysis to the three broad-based stock index options proposals currently before the Commission is indicative of the conceptual complexities of attempting to limit "multiple trading" of stock index options.

[12] *See* File No. SR–NYSE–82–2, NYSE Economic Justification Supplement, p. 28–29 ("NYSE Supplement").

[13] An alternative to the use of stock index options as a hedge would be to liquidate the equity securities position being hedged. The alternative of using stock index options would result in far lower transaction costs, particularly if the hedge were sought on a short-term basis only.

[14] NYSE Supplement at 27–28.

stocks are the result of price changes made by the market as a whole.[15] This "market" or "systematic" risk of stock investment has increased in recent years and is now estimated by some to account for 50–70 percent of the price variability of most common stocks.[16] Broad-based index options could be used to hedge against this systematic risk. An additional portion of a stock's price movements result from factors that affect the entire industry of the stock's issuer.[17] Sector or industry index options could provide a hedge against this industry price component.

Finally, options on stock indices could be used for speculation. For example, an investor who believes that stock prices in a particular segment or industry will generally move in a certain direction, but who does not wish to assume any firm-specific risk, could purchase put or call index options in order to profit from the anticipated movement in stock prices generally, or in the particular industry.

Although the proposed options based on stock indices could provide substantial economic benefits, the Commission notes that two elements of stock index options which limit their economic utility will need to be fully disclosed to all investors. First, as in the case of all options, the investor potentially stands to lose his entire investment in a short time because index options are wasting assets of limited duration. In addition, a second risk factor, unique to stock index options, is the extent to which an index, whether a sector or a market index, effectively hedges a portfolio. It is likely that both sector and market index options will serve only as "crosshedges," [18] rather than as complete hedges, even to diversified portfolios, since it is unlikely that the portfolio being hedged will precisely replicate the composition of the index underlying the option contract. In this regard, the Commission has required the exchanges to develop a disclosure document detailing the risks of stock index options trading and establish procedures to assure its delivery to public customers prior to their trading in stock index options.[19]

V. Regulation of Member Organizations

A. Disclosure

Under the rules of the exchanges, [20] which were recently amended to reflect the Commission's adoption of a new disclosure system for the sale of standardized options, [21] an options disclosure document, which provides a general description of the purposes and risks of options trading, must be delivered to every options customer at or before the time his or her account is approved for options trading. For customers trading stock index options, a stock index options supplement which discloses the unique features, risks, and purposes of stock index options trading must be delivered at or before the time the customer engages in stock index options trading. Finally, the customer must be given, on request, an OCC prospectus submitted pursuant to the Securities Act of 1933.

The disclosure document which the exchanges must submit to the Commission prior to the trading of stock index options will be required to specifically describe stock index options, explain their uses, detail the special risks associated with stock index options trading, and describe any special features (such as the use of cash settlement). As noted previously, it is particularly important that prospective investors appreciate that the usefulness of a stock index option as a vehicle to hedge a diverse portfolio is dependent upon the degree of correlation between the price movements in the securities contained in the portfolio and price movements of the index underlying the "hedging" option.

The Commission has determined that the disclosure of such information on the stock index option disclosure supplement will adequately inform the investor of the risks of stock index options trading. Based both on the information to be provided by disclosure and on the similarities between the trading of options on individual equities and options on stock indices, the Commission has determined that the approval of accounts for options trading need not be followed by a separate approval for trading in stock index options. The exchanges must establish procedures, however, to ensure that registered representatives ("RRs") deliver the stock index option disclosure document supplement to customers at or before the time a customer engages in stock index options trading.

For the same reasons, the Commission does not find objectionable the exchange proposals not to require member firm personnel who currently are qualified to sell, or supervise the sale of options on individual securities, to be separately qualified to sell or supervise the sale of stock index options.

B. Position and Exercise Limits and Daily Reporting Requirements

NYSE and CBOE have proposed rules that would prohibit any market participant from acquiring a position in, or exercising over a period of five consecutive business days, stock index options representing a value greater than $300 million in terms of aggregate price.[22] Amex has proposed position and exercise limits of 40,000 contracts.[23] The exchanges have indicated that these position and exercise limits, which are much larger than the 2,000 contract limits currently in place for individual stock options, are necessary in order to make the proposed options contracts useful for persons seeking to hedge sizable stock portfolios. In view of the number of stocks comprised by the proposed indices as well as the reliance on cash settlement, the proposed option contracts do not appear to be susceptible to disruption or manipulation of the securities markets. They also appear justified in terms of the needs of market participants. Thus, the Commission does not believe that the proposed larger position and exercise limits are excessive. The exchanges will continue to require that any position of 200 or more contracts in a stock index option on one side of the market must be reported daily to the exchanges.[24] This will permit the exchanges and the Commission to monitor the development of the new options market. At a later date, and depending on the development of stock index options markets, it may be possible to reconsider these reporting requirements.

C. Trading Halts and Suspensions

The exchanges have incorporated into their current rules specific additional

[15] For example, increases in interest rates tend to depress prices of all stocks, regardless of the business in which the issuer is engaged.

[16] W. F. Sharpe, *Portfolio Theory of Capital Markets*, McGraw-Hill Co., New York, 1970, p. 150.

[17] For example, increased fuel costs, or airport user fees, would tend to affect the prices of all airline stocks.

[18] A "cross-hedge" generally tracks price movements in the instrument being hedged, but does not invariably or exactly do so. For example, a short position in long-term Treasury bonds could be used as a cross-hedge for a position in GNMA certificates, because their prices generally move in a parallel manner.

[19] For a complete discussion of disclosure requirements, *see* Part V, *infra*.

[20] *See, e.g.*, CBOE Rules 9.7 and 9.15.

[21] Securities Exchange Act Release No. 19055 (September 16, 1982), 47 FR 41950 (September 23, 1982).

[22] *See* proposed rules CBOE 24.4 and 24.5 and NYSE 704 and 705.

[23] *See* proposed Amex Rules 904C and 905C. The 40,000 contract limit would represent a total dollar amount of approximately $135,000,000, based on the value of the Amex Index as of November 5, 1982.

[24] *See* proposed rules NYSE 706, CBOE 24.6 and Amex 906C.

factors to be reviewed in order to determine if a trading halt or suspension with respect to stock index options is "appropriate in the interests of a fair and orderly market and to protect investors." [25]

The proposed exchanges rules provide for a trading halt if the underlying index is not being computed or all trading in a primary market has been halted. Also, to protect against stock index options trading where continued index calculation does not reflect the changing market values of a number of securities,[26] the NYSE has proposed to impose a trading halt in the stock index option whenever:

> * * * trading has been halted or suspended in underlying stocks that collectively contribute (1) 20 percent of the current index group value (in the case of index stock groups comprised of more than 50 stocks), and (2) 10 percent of the current index group value (in the case of index stock groups comprised of 50 or fewer stocks) * * *

CBOE and Amex, which initially contemplate trading options on indices composed of more than 50 stocks, have also proposed a 20 percent standard. In the Commission's view, those exchange proposals appropriately provide for trading halts to prevent the trading of stock index options on the basis of inadequate pricing information.

D. Margin

The exchanges have not submitted proposals for the margining of stock index options. Prior to the commencement of trading, margin rules must be in place.

VI. New York Entry Into the Stock Index Options Market

The stock index options proposed by the NYSE represent the first entry of the NYSE into the listed options market.[27] In the Commission's view, NYSE trading of stock index options does not raise significant concerns that have not been discussed in the context of the NYSE proposal to trade options on Treasury securities.

A principle concern voiced by certain of the existing options exchanges in comments on NYSE's proposal to trade options on five-stock groups was that such options could compete indirectly with individual stock options. The exchanges noted that a number of manipulative and competitive concerns have been raised, in the Options Study[28] and by the exchanges, about NYSE entry into the individual equity options market. Since NYSE's proposed index options would relate to indices comprising at least 50 stocks, it is unlikely that they could be deemed to compete with options on individual securities. In this regard, none of the options exchanges have submitted comments opposing NYSE trading of stock index options.

In approving the NYSE proposal, the Commission recognizes that some problems may arise that are inevitable with the initiation of a new market. The Commission believes that such problems may be resolved without disruption to any new or existing options or securities market by requiring the NYSE to develop a surveillance system which is comparable to that of the existing options exchanges. Thus, while the Commission approves the NYSE proposal, trading in NYSE stock index options may not begin until the NYSE has submitted a comprehensive surveillance package for stock index options and has demonstrated that the proposed surveillance enhancements are operational prior to the commencement of trading.

VI. Surveillance

Section 6(b)(5) of the Act requires an exchange, as a condition of registration, to have rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Section 6(b)(1) of the Act also requires that an exchange be organized and have the capacity to comply, and enforce compliance by its members and their associated persons with the provisions of the Act, the rules thereunder, and the rules of the exchange. Accordingly, an exchange has an obligation to develop and administer a comprehensive surveillance program designed to detect manipulation and other improper trading activities.

While the Commission does not believe that the proposed options on indices raise grave concerns with respect to intermarket manipulation, the potential for manipulative or disruptive impact on the underlying equity market increases as indices underlying proposed stock index options become less diverse, smaller, and less capitalized. In this regard, the exchanges propose to initiate stock index options trading using indices which are weighted and are composed of a number of well-capitalized, diversified securities that have active secondary markets. These index characteristics are factors which both decrease the potential for, and the possibility of profit from, inter-market manipulation involving the index options and underlying stocks.[29]

The proposed trading of stock index options by Amex and CBOE, which already have established options surveillance operations, does not appear to give rise to major new surveillance concerns. however, trading in stock index options may not commence at Amex or CBOE until those exchanges demonstrate their capacity to adequately monitor stock index options trading by submitting a satisfactory plan which details their proposed surveillance enhancements related to stock index options and by demonstrating that those enhancements will be operational prior to the commencement of trading.

As noted previously, the NYSE's entry into options trading for the first time will require a corresponding entry into options surveillance. The Commission will carefully review the NYSE's surveillance procedures before NYSE may begin trading in stock index options. At a minimum, the surveillance capacity of the NYSE with respect to options must be comparable to the surveillance programs of the existing options exchanges, taking into account the unique characteristics of indices as underlying instruments. In this regard, the NYSE must incorporate a functioning options audit trail in its surveillance program prior to the commencement of trading.

VII. Findings and Conclusion

Under Section 19(b)(2) of the Act, the Commission must approve the foregoing rule changes if it determines that the proposed rule changes are consistent with the requirements of the Act and the

[25] *See, e.g.,* Amex Rule 917(b) and CBOE Rule 6.3.

[26] For instance, one or more securities may be subject to trading halts due to indications of an impending tender offer. In addition, even in situations in which trading has been halted or suspended in less than 20 percent of the stocks in the index, it may be appropriate to halt trading in an index option. For example, if informal "indications of interest" on the floor of an exchange indicate substantial price changes in one or more of the stocks constituting the index that could alter measurably the value of the index, it may be appropriate to halt trading in options on the index.

[27] The Commission previously approved in principle a NYSE proposal to trade Treasury options. *See* File No. SR–NYSE–81–5 and Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 63423 (December 31, 1981). The exchange, however, for a number of reasons, subsequently decided not to trade Treasury options and the Commission has never formally taken action on the NYSE filing.

[28] Report of the special Study of the Options Market to the Securities and Exchange Commission, H. Rep. No. IFC–3, 96th Cong., 1st Sess. (Comm. Print 1978) ("Options Study") at 983–1027.

[29] Future exchange rule filings submitted pursuant to Rule 19b–4 under the Act proposing to trade options on additional indices should indicate that, if any, surveillance enhancements with respect to the proposed stock index options would be appropriate.

rules thereunder applicable to national securities exchanges. The Commission has reviewed carefully the rules proposed by Amex, CBOE and NYSE to accommodate the listing and trading of options on stock indices. In addition, the Commission has reviewed the proposed rules of NYSE to provide for the regulation of options floor trading activities generally. For the reasons set forth above, the Commission has concluded that the rules provide for adequate and proper regulation of the proposed markets. Accordingly, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

Prior to the commencement of trading, however, the exchanges must satisfy a number of conditions. First the exchanges must secure approval of margin rules. In addition, surveillance enhancements must be in place. Third, the exchanges must submit for review the stock index options supplement to the options disclosure document. Finally, the Commission must also approve OCC's proposed rule changes concerning the issuance, clearance and settlement of stock index options. The Commission finds good cause to approve recent amendments submitted by the Amex, CBOE and NYSE prior to the thirtieth day after publication of notice since the amendments offered by each reflect identical or substantially similar rules previously proposed and published by either one or both of the other exchanges proposing stock index options and, therefore, are matters with respect to which public comments already have been solicited.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes, as amended, be, and hereby are, approved.

By the Commission.

Shirley E Hollis,

Assistant Secretary.

[FR Doc. 82-32815 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

November 22, 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:

American Water Works Co., Inc.
Common Stock, $2.50 Par Value (File No. 7-6369)
First City Properties
Common Stock, $.10 Par Value (File No. 7-6370)
Floating Point Systems
Common Stock, No Par Value (File No. 7-6371)
Florida East Coast Railway Co.
Common Stock, $6.25 Par value (File No. 7-6372)
Florida Steel Corp.
Common Stock, $1 Par Value (File No. 7-6373)
General Re Corp.
Common Stock, $.50 Par Value (File No. 7-6374)
General Signal Corp.
Common Stock, $1 Par Value (File No. 7-7375)
Gerber Scientific, Inc.
Common Stock, $1 Par Value (File No. 7-6376)
Giant Portland & Masonary Cement Co.
Common Stock, $1 Par Value (File No. 7-6377)
United Aircraft Products
Common Stock, $.50 Par Value (File No. 7-6378)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 14, 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 82-32616 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22717; 70-6812]

New England Power Co.; Proposed Issuance to Finance Construction of Pollution Control Facilities; Exception From Competitive Bidding

November 18, 1982.

In the matter of New England Power Co., 25 Research Drive, Westborough, Massachusetts 01581.

New England Power Company ("NEP"), an electric utility subsidiary company of New England Electric System, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

NEP's Brayton Point generating station in Somerset, Massachusetts, is comprised of four generating units. Units 1 through 3 were originally designed to burn coal but were converted to oil burning in the late 1960's to take advantage of then favorable oil prices. In conformity with the national policy of reducing foreign oil consumption, NEP began converting these three units back to coal in October of 1979. At the time construction of the conversion facilities began, it was estimated that the cost of coal conversion would be $180 million. The estimated pollution control expenditures related to the conversion were able to support $90 million of tax-exempt financing. By order dated March 14, 1980 (HCAR No. 21476) the Commission authorized NEP to enter into a Loan Agreement ("Agreement") with the Massachusetts Industrial Finance Agency ("MIFA"), an independent public corporation empowered to issue tax-exempt pollution control bonds for the benefit of industrial enterprises. Under an Indenture between MIFA and a corporate trustee ("MIFA Indenture"), MIFA has issued $90 million of three year bonds to the public. Pursuant to the Agreement, MIFA loaned the proceeds of the three year bond issue to NEP, which, in turn, issued General and Refunding Mortgage Bonds ("G&R Bonds") to MIFA in equivalent amounts with payments to be made to MIFA at such times and in such amounts as correspond to the payments for principal, premium, if any, and interest on MIFA's bonds.

Because of high rates of inflation during the construction period and unforeseeable engineering difficulties, the costs for completing the coal conversion at Brayton Point have exceeded NEP's original estimates. It is currently estimated that the total cost of coal conversion will be approximately

$195 million. This latest estimate may be able to support up to $115 million of tax-exempt pollution control bonds.

NEP proposes to finance pollution control equipment with tax-exempt debt in an additional aggregate principal amount not exceeding $25 million. This arrangement would permit NEP to finance the completion of the pollution control components of the Brayton Point coal conversion project and secure the benefits of tax-exempt financing for NEP and its customers. The issue and sale of such additional bonds to pay the cost of completing the pollution control facilities was contemplated by MIFA, subject to the requirements of Massachusetts law, in the Agreement.

Because of certain timing limitations which preclude a long-term issue at this time and in an effort to secure long-term financing at the most advantageous rate in response to market conditions, NEP proposes to complete the supplemental pollution control financing in two phases. The first phase would involve the issue and sale of unsecured short-term tax-exempt pollution control notes and/or obtaining bank loans with an aggregate principal amount not exceeding $25 million. The second phase would be the refinancing of these notes and/or bank loans with long-term pollution control bonds having a maturity not to exceed 30 years.

Phase I—Short-Term Financing

NEP and MIFA propose to enter into a separate Loan Agreement ("New Agreement") under which MIFA would agree to issue and sell short-term tax-exempt pollution control notes and/or obtain bank loans in an aggregate amount not exceeding $25 million for up to three years. The maturity of any such short-term borrowing would not exceed one year. The amount to be financed will include the estimated cost to complete construction of the qualified pollution control facilities, capitalized interest, and certain expenses of issue associated with this and other pollution control financings all in conformity with the requirements of the Internal Revenue Code.

The interest rate, form, and maturity of the notes issued and sold by MIFA will be approved by the Board of Directors of MIFA. While no formal commitments have been made, it is expected that any short-term bank loan would be obtained at an effective interest cost, subject to approval by MIFA, not exceeding the interest cost of borrowing at 75% of the bank's base or prime lending rate. At the current prime lending rate of 12%, the effective interest cost of a bank loan obtained by MIFA would not exceed 9% per annum. It is expected that under current market conditions such a loan or bank note would carry an interest rate of about 6¾%. The pollution control notes could be sold on behalf of MIFA by one or more investment bankers.

The New Agreement will provide that MIFA will loan the proceeds of the sale of any pollution control notes and/or the proceeds of any bank loans to NEP in exchange for NEP's unsecured promise to pay, or short-term notes issued from NEP to MIFA in equivalent amounts with payments, to MIFA at such times and of such amounts as will correspond to the payments for principal of, and interest on, MIFA's notes and/or bank loans.

By order dated March 31, 1982 (HCAR No. 22438) NEP was authorized to make short-term bank and money pool borrowings and to issue commercial paper in the form of unsecured promissory notes having maturities not exceeding 270 days up to an aggregate outstanding amount of $195 million. Such authority extends through March 31, 1983. Any short-term borrowing commitments made by NEP pursuant to the proposed transaction would be considered in determining NEP's remaining short-term borrowing authority and would not cause NEP to exceed its short-term debt limitations.

Phase II—The Long-Term Pollution Control Bonds

The structure of the long-term financing for the supplemental pollution control expenditurs will be similar to the structure of the refinancing of the initial $90 million pollution control expenditure. It is contemplated that MIFA will issue long-term bonds to refinance the pollution control notes and/or bank loans. Such long-term MIFA Bonds will be issued pursuant to a supplemental MIFA indenture. The interest rate, form, and maturity of these bonds will be approved by the Board of Directors of MIFA. In no event would the maturity of such long-term bonds exceed 30 years. As provided in a supplemental loan agreement, MIFA will lend the proceeds from the issue and sale of such bonds to NEP. NEP will evidence its obligations to MIFA by delivery of not exceeding $25 million G&R Bonds ("Additional G&R Bonds") in equivalent principal amount with payments to be made at such times and in such amounts as will correspond to the payments for principal, premium, if any, and interest on NEP's bonds.

NEP's General and Refunding Mortgage Indenture ("G&R Indenture") requires that First Mortgage Bonds be issued and pledged to the maximum amount permissible (less a reserve for sinking and improvement fund requirements) under NEP's First Mortgage Indenture as additional security for all G&R Bonds. The G&R Bonds issued to NEP will have a lien subordinate to NEP's First Mortgage Bonds.

At the time the Additional G&R Bonds are issued, NEP may pledge additional First Mortgage Bonds in an amount not to exceed $25 million. Such bonds will be pledged to the G&R Trustee as security for the holders of all G&R Bonds. The pledged bonds will not pay interest as long as interest payments are made on the Additional G&R Bonds, and to the extent payments of principal are made on the pledged First Mortgage Bonds, the debt due from NEP to the holders of the Additional G&R Bonds will be reduced so there will be no double recovery. This represents a first mortgage claim for the holders of G&R Bonds, including the Additional G&R Bonds. The exact amount of such First Mortgage Bonds pledged will be determined at the time the Additional G&R Bonds are issued. From time to time, as it becomes possible for NEP to pledge additional bonds, such bonds may be issued as additional security for the outstanding G&R Bonds.

It is contemplated that the long-term MIFA bonds will be sold by MIFA under arrangements between MIFA and underwriters. While NEP will not be a party to the Underwriting Agreement between MIFA and the underwriters, that agreement will provide that the terms of the bonds and their sale by MIFA shall be satisfactory to NEP. In addition, NEP may give certain assurances to the underwriters in the form of an Assurance Letter.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-32614 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Extension

• Form R-31

No. 270-273

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of clearance Form R-31 used in the collection of Market Value and Volume of Sales on all U.S. Stock Exchanges.

Submit comments to OMB Desk Officer: Mr. Robert Veeder, (202) 395-4814, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Assistant Secretary.

November 19, 1982.

[FR Doc. 82-32607 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, 272-2142.

Upon written request copy available from: Securities and Exchange Commission Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension

• Rule 15b10-6

No. 270-192

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance Rule 15b10-6, (17 CFR 240.15b10-6), under the Securities Exchange Act of 1934 which requires broker-dealers not members of a registered national securities association ("SECO broker-dealers") to make and maintain certain customer account records.

The potential respondents are all SECO broker-dealers. There are currently approximately 435 SECO broker-dealers registered with the Commission.

Submit comments to OMB Desk Officer: Robert Veeder, (202) 395-4814.

Shirley E. Hollis,

Assistant Secretary.

November 19, 1982.

[FR Doc. 82-32608 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Rules Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Ofice of Consumer Affairs and Information Service, Washington, D.C. 20549.

Revision

• Rule 17Ad-7 (17 CFR 240.17Ad-7)

SEC File No. 270-152

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension Rule 17Ad-7 under the Securities Exchange Act of 1934 concerning retention of records by registered transfer agents. Rule 17Ad-7 requires registered transfer agents to retain information needed (1) to assure that registered transfer agents are maintaining records to monitor and to control adequately their performance and (2) to permit the appropriate regulatory agencies ("ARA's") to examine those transfer agents for compliance with the Commission's rules.

The potential respondents are registered transfer agents.

Submit comments to OMB Desk Officer: Robert Veeder, (202) 395-4814.

Shirley E. Hollis,

Assistant Secretary.

November 19, 1982.

[FR Doc. 82-32609 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Rules Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Service, Washington, D.C. 20549.

Revision

• Rule 17f-1(g) (17 CFR 240.17f-1(g))

SEC File No. 270-30

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension Rule 17f-1(g) under the Securities Exchange Act of 1934 concerning retention of documents by reporting institutions. Rule 17f-1(g) requires reporting institutions to retain all documents that are necessary for the purpose of monitoring compliance with the registration, reporting and inquiry requirements of the Rule.

Submit comments to OMB Desk Officer: Mr. Robert Veeder (202) 395-4814.

Shirley E. Hollis,

Assistant Secretary.

November 19, 1982.

[FR Doc. 82-32610 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Rules Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Service, Washington, D.C. 20549.

Revision

• Rule 17f-1(b) (17 CFR 240.17f-1(b))

SEC File No. 270-28

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension Rule 17f-1(b) under the Securities Exchange Act of 1934 concerning the registration in the Lost and Stolen Securities Program. Rule 17f-1(b) requires entities involved in the securities industry to register in the Lost and Stolen Securities Program in order to obtain access to a confidential data base set up to fulfill a mandatory statutory requirement that those entities report and inquire on missing, lost, stolen or counterfeit securities.

Submit comments to OMB Desk Officer: Robert Veeder (202) 395-4814.

Shirey E. Hollis,

Assistant Secretary.

November 19, 1982.

[FR Doc. 82-32611 Filed 11-29-82; 8:45 am]

BILLING CODE 8010-01-M

Rules Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2700.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs

and Information Service, Washington, D.C. 20549.

Revision

- Rule 17Ad–6 (17 CFR 240.17Ad–6)

SEC. File No. 270–151

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension Rule 17Ad–6 under the Securities Exchange Act of 1934 concerning the requirement that registered transfer agents make and keep current various records and permit the appropriate regulatory agencies to examine those records for compliance with the Commission's rules.

The potential respondents are registered transfer agents.

Submit comments to OMB Desk Officer: Robert Veeder, (202) 395–4814.

Shirley E. Hollis,

Assistant Secretary.

November 19, 1982.

[FR Doc. 82–32612 Filed 11–29–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 09/09–0315]

Enterprise Finance Capital Development Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1982)), under the name of Enterprise Finance Capital Development Corporation, Room 1500, One East First Street, Reno, Nevada 89501, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and stockholders of the Applicant are as follows:

Robert N. Hampton, 935 Stonebridge Condominiums, Snowmass Village, Colorado 81615, President

Robert S. Russell, 746 N. Waukegan Road, Lake Forest, Illinois 6–045, Vice President, Treasurer and Director

Michael R. Fayhee, 2237 Wesley Avenue, Evanston, Illinois 60201, Secretary and Director

Jacob Martin, 1103 Raleigh Road, Glenview, Illinois 60025, Director

John Walker, 2519 N Major Avenue, Chicago, Illinois 60639, Assistant Treasurer

Enterprise Finance Company, Room 1500, One East First Street, Reno, Nevada 89501, Sole Owner

The applicant, a Delaware corporation with its principal place of business at Room 1500, One East First Street, Reno, Nevada 89501 will begin operations with $505,000 paid-in capital and paid-in surplus.

The applicant will conduct its activities principally in the State of Nevada.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Reno, Nevada.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 23, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82–32660 Filed 11–29–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/577]

Secretary of State's Advisory Committee on Private International Law

Study Group on Trusts; Meeting

There will be a meeting of the Study Group on Trusts, a study group of the subject Advisory Committee, at 10:30 a.m. on Friday, December 17, 1982 in Room 1205 of the Department of State in Washington, D.C. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The purpose of the meeting is to review the conclusions resulting from the first meeting of the Special Commission on Trusts of the Hague Conference on Private International Law with respect to the development of an international convention on the law applicable to trusts and their recognition and draft articles of such a convention subsequently prepared by an *ad hoc* Drafting Committee on the Hague Conference. Also discussed will be the nature and extent of likely United States interest in the convention, to be adopted in its final form at the 15th session of the Hague Conference in 1984.

Entry to the Department of State building is controlled and members of the general public should use the "C" Street entrance. As entry will be facilitated by advance arrangements, members of the general public planning to attend should, prior to December 17, 1982, notify Ms. Rochelle Renna, Office of the Assistant Legal Adviser for Private International Law, Department of State, (telephone (202) 632–8134) of their name, affiliation, address, and phone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice Chairman, Advisory Committee on Private International Law.

[FR Doc. 82–32593 Filed 11–29–82; 8:45 am]

BILLING CODE 4710–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–24]

Tanners' Council of America, Inc.; Termination of Investigation

The United States Trade Representative, in accordance with the provisions of 15 CFR 2006.6, is terminating the investigation under Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) regarding the Agreement Concerning Hide Exports and Other Trade Matters (the Agreement) between the Governments of the United States and Argentina entered into on August 10, 1979. On October 9, 1981, the Tanners' Council of America, Inc. (TCA) filed a petition under section 301 alleging, among other things, that Argentina has failed to fulfill its obligations under the Agreement, and that such failure burdens and restricts U.S. commerce. A **Federal Register** notice announcing the initiation of the investigation and including the text of the petition was published on December 4, 1981 (46 FR 59353), and public comment on the allegations in the petition was invited.

In February, 1982, U.S. Government officials began a series of consultations

with officials of the Government of Argentina on the issues raised by the TCA. A **Federal Register** notice was published on September 16, 1982 (47 FR 40959) announcing a public hearing on a proposed recommendation to the President concerning termination of the Agreement. The public hearing was held on October 6, 1982 and interested parties were given the opportunity to present their views on that proposal and on all aspects of the investigation. On October 29, 1982, the United States and Argentina mutually terminated the Agreement effective October 30, 1982, and the President by Proclamation No. 4993 (47 FR 49625, November 2, 1982) increased the column 1 rate of duty on bovine leather (TSUS 121.61) to five percent ad valorem effective October 30, 1982.

On November 9, 1982 the TCA notified the United States Trade Representative by letter of its desire to withdraw its petition.

In view of the above, the investigation of the complaint filed by the Tanners' Council of America, Inc. is terminated.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

November 16, 1982.

[FR Doc. 82-32695 Filed 11-29-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

[Supp. to Department Circular; Public Debt Series—No. 32-82]

Treasury Notes; Series G-1988; Interest Rates

November 24, 1982.

The Secretary announced on November 23, 1982, that the interest rate on the notes designated Series G-1988, described in Department Circular—Public Debt Series—No. 32-82 dated November 17, 1982, will be 10⅛ percent. Interest on the notes will be payable at the rate of 10⅛ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 82-32667 Filed 11-29-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 230
Tuesday, November 30, 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

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

TIME AND DATE: 2 p.m., December 6, 1982.

PLACE: Cash Room, Department of the Treasury (use Pennsylvania Avenue Entrance) Pennsylvania Avenue between 15th Street and East Executive Avenue, Washington, D.C. 20220.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Authorizing unlimited transactions features on the money market deposit account or a new short-term transaction account.
2. Rationalizing the features of existing short-term deposit accounts.
3. Accelerating the deregulation of interest rate ceilings.

Note.—The meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the DIDC Offices at the Department of the Treasury, and copies may be purchased for $5.00 a cassette by calling (202) 566-5152 or by writing to: Depository Institutions Deregulation Committee, Department of the Treasury, Room 1058 MT, Washington, D.C. 20220.

For further information about the DIDC and the December 6, 1982 meeting please call (202) 566-3734.

November 23, 1982.

Gordon Eastburn,

Acting Executive Secretary of the Committee.

[S-1722-82 Filed 11-26-82; 9:04 am]

BILLING CODE 6210-01-M

2

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, December 6, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 1, 1982)
3. Any items carried forward from previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 26, 1982.

James McAtee,

Associate Secretary of the Board.

[S-1727-82 Filed 11-26-82; 1:16 pm]

BILLING CODE 6210-01-M

3

NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

Public Hearing

DATE: December 7, 1982.

PLACE: John F. Kennedy Library, Boston, MA.

TIME: 10.00 a.m. until 4 p.m.

PURPOSE: To receive testimony on the Commission's draft final report of the Insurance Premium. And to hear testimony for the subcommittee on "Sources of Funds" for student financial assistance. Written testimony is invited, and may be sent to Commission at the above address.

FOR FURTHER INFORMATION CONTACT: Donna M. Lumia, Public Hearings Coordiniator (202) 472-9023.

Submitted the 22d day of November, 1982.

Richard T. Jerue,

Chief Executive Officer.

[S-1726-82 Filed 11-26-82; 12:08 pm]

BILLING CODE 6820-BC-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of November 29, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Wednesday, December 1:*

10:00 a.m.:
Discussion of Immediate Effectiveness Issues in TMI-1 Restart Proceeding (Closed—Exemption 10)

2:00 p.m.
Briefing on Pressurized Thermal Shock (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of Pending Commission Proceeding Concerning Renewal of Byproduct Materials License for Self-Powered Lighting, Inc. scheduled for November 23 was postponed.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

November 23, 1982.

Walter Magee,

Office of the Secretary.

[S-1723-82 Filed 11-26-82; 9:53 am]

BILLING CODE 7590-01-M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

TIME AND DATE: December 7 and 8, 1982, 9 a.m.

PLACE: The Hilton Hotel, Pavilion Room, Portland, Oregon.

MATTERS TO BE CONSIDERED:

Resource Portfolio Evaluation
Public Comment on:
—Development of Resource Targets
—Establishing Conservation Targets

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222-5161.

Edward Sheets,

Executive Director.

[S-1724-82 Filed 11-26-82; 11:54 am]

BILLING CODE 0000-00-M

6

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

TIME AND DATE: December 15 and 16, 1982, 9 a.m.

PLACE: The Hilton Hotel, Ballroom "B", Portland, Oregon.

MATTERS TO BE CONSIDERED:
Resource Portfolio Evaluation
Council Business

FOR FURTHER INFORMATION CONTACT:
Ms. Bass Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[S–1725–82 Filed 11–26–82; 11:54 am]

BILLING CODE 000–00–M

7

PAROLE COMMISSION

[3P0401]

TIME AND DATE: 9 a.m. to 5:30 p.m., Friday, December 17, 1982.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 10 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by the Examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marbel, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

[S–1728–82 Filed 11–26–82; 2:12 pm]

BILLING CODE 4410–01–M

federal register

Tuesday
November 30, 1982

Part II

Environmental Protection Agency

Pesticide Chemicals Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 455

[WH-FRL 2220-1]

Pesticide Chemicals Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed regulation.

SUMMARY: The Environmental Protection Agency, EPA, is proposing effluent limitations guidelines for "best practicable technology," "best conventional technology" and "best available technology", new source performance standards and pretreatment standards for the Pesticide Chemicals Category as required under Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act. These proposed regulations will limit the discharge of effluents into waters of the United States or into publicly owned treatment works from facilities that produce and formulate pesticides. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be received by January 31, 1983.

ADDRESS: Send comments to: Mr. George M. Jett, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attention: EGD Docket Clerk, Pesticide Chemicals Industry (WH-552). The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (EPA Library Rear) PM-213. Copies of technical documents may be obtained from the Distribution Officer at the above address or by calling (202) 382-7115. The economic analysis may be obtained from Dr. Ellen Warhit, Economic Analysis Staff (WH-586), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, or by calling (202) 382-5381.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Mr. George M. Jett, at the address listed above, or by calling (202) 382-7180.

SUPPLEMENTARY INFORMATION: Overview: This preamble describes the scope, purpose, legal authority and background of this proposal, the technical and economic bases and the methodology used by the Agency to develop these proposed effluent guidelines limitations and standards, and the procedures which will be utilized to implement the regulations upon promulgation. It also presents a summary of public comments on the regulatory briefing package which was circulated in October 1980 to the industry and other interested parties, and solicits comments on specific areas of interest.

These proposed regulations are supported by EPA's technical conclusions which are detailed in the Development Document for Best Available Technology, Pretreatment Technology, New Source Performance Technology and Expanded Best Practicable Control Technology in the Pesticide Chemicals Industry. The Agency's economic analysis is presented in the Economic Impact Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Pesticide Category.

Abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

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I. Legal Authority

The regulations described in this notice are proposed under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, P.L. 95-217 (the "Act")). These regulations are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979).

II. Background

A. The Clean Water Act

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)).

Section 301(b)(1)(A) set a deadline of July 1, 1977, for existing industrial direct dischargers to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT").

Section 301(b)(2)(A) set a deadline of July 1, 1983, for these dischargers to achieve "effluent limitations requiring

the application of the best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT").

Section 306 required that new industrial direct dischargers comply with new source performance standards ("NSPS"), based on best available demonstrated technology.

Sections 307(b) and (c) required the Administrator to set pretreatment standards for new and existing dischargers to publicly owned treatment works ("POTW"). While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402, the Act made pretreatment standards enforceable directly against dischargers to POTWs (indirect dischargers).

Section 402(a)(1) of the 1972 Act does allow requirements for direct dischargers to be set cast-by-case. However, Congress intended control requirements to be based for the most part on regulations promulgated by the Administrator of EPA.

Section 304(b) required regulations that establish effluent limitations reflecting the ability of BPT and BAT to reduce effluent discharge.

Sections 304(c) and 306 of the Act required regulations for NSPS.

Sections 304(g), 307(b), and 307(c) required regulations for pretreatment standards.

In addition to these regulations for designated industry categories, Section 307(a) required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants.

Finally, Section 501(a) authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these regulations by the deadlines contained in the Act, and as a result EPA was sued in 1976 by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the Court. This agreement required EPA to develop a program and meet a schedule for controlling 65 "priority" pollutants and classes of pollutants in 21 major industries. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

Several of the basic elements of the Settlement Agreement program were incorporated into the Clean Water Act of 1977. This law also makes several important changes in the Federal water pollution control program.

Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now set July 1, 1984 as the deadline for industries to achieve effluent limitations requiring application of BAT for "toxic" pollutants. "Toxic" pollutants here includes the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act.

Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at controlling toxic pollutants.

To strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe certain "best management practices" ("BMPs"). These BMPs are to prevent the release of toxic and hazardous pollutants from: (1) plant site runoff, (2) spillage or leaks, (3) sludge or waste disposal, and (4) drainage from raw material storage if any of those events are associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revised the control program for non-toxic pollutants.

For "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT") instead of BAT to be achieved by July 1, 1984. The factors considered in assessing BCT for an industry are the relationship between the cost of attaining a reduction in effluents and the effluent reduction benefits attained, and a comparison of the cost and level of reduction of such pollutants by publically owned treatment works and industrial sources. For nontoxic, nonconventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or by July 1, 1984, whichever is later, but not later than July 1, 1987.

B. Prior EPA Regulations

EPA promulgated BPT for the Pesticides Chemicals Manufacturing Category on April 25, 1978 (43 FR 17776; 40 CFR Part 455), and September 29, 1978 (43 FR 44846; 40 CFR Part 455, Subpart A).

Several industry members challenged the BPT regulation on April 26, 1978 and the Court of Appeals remanded them on two minor issues. *BASF Wyandotte Corp. v. Costle*, 598 F. 2d 637 (1st Cir. 1979), *cert. denied, Eli Lilly v. Costle*, 444 U.S. 1096 (1980). The Agency subsequently addressed the two issues on remand, and the Court upheld the regulations in their entirety. *BASF Wyandotte Corp. v. Costle*, 614 F. 2d 21 (1st Cir. 1980).

The effects of the BPT regulation were as follows:

1. Direct discharges from the manufacture of 49 organic pesticide active ingredients were regulated for the following parameters: active ingredient, BOD, COD, TSS, and pH.

2. Direct discharges from the manufacture of all other organic pesticide active ingredients, except metallo-organic pesticides containing mercury, copper, cadmium, or arsenic, were regulated for BOD, COD, TSS, and pH.

3. Direct dischargers who manufacture metallo-organic pesticide active ingredients containing mercury, copper, cadmium, or arsenic were required to achieve zero discharge of process wastewater.

4. Direct dischargers that formulate and/or package pesticide active ingredients were required to achieve zero discharge of process wastewater.

5. Wastewater discharges from the manufacture of 25 organic pesticide active ingredients and classes of pesticides were specifically excluded from coverage for any parameter due to lack of adequate data and/or analytical methodology.

C. Overview of the Industry

These proposed regulations apply to wastewater discharges from facilities where pesticide chemicals active ingredients are produced and/or formulated and packaged. This industry is included within the U.S. Department of Commerce, Bureau of the Census Standard Industrial Classification (SIC) Major Group 2800 in Series, Chemicals and Allied products.

The pesticide manufacturing industry as defined in these proposed regulations includes 117 plants currently manufacturing some 248 pesticides, located primarily in the eastern half of the United States, in Texas, and in California. Plant ownership is distributed such that approximately 72 percent of all companies own only one plant. Approximately 84 percent of all patented pesticides are produced only by individual plants, whereas after patent expiration each of the remaining 16 percent is produced at from two to four different plants.

Fifty percent of all pesticide plants have wastewater flows of less than

10,000 gallons per day, although flows for large plants reach 1 million gallons per day. Forty-two of these 117 plants discharge process wastewater to navigable waters, 37 are indirect dischargers, and the remainder dispose of their wastewater by deep well injection, incineration, contract hauling, evaporation ponds, land application, or ocean discharge. Eleven plants generate no wastewater.

As a result of the complex materials and processes used to produce pesticides, a wide variety of pollutants can potentially be discharged. Based on concentration and quantity, treatability, and evironmental and health effects, the pollutants of concern in the pesticide industry were determined to be: (1) 34 toxic pollutants; (2) 138 nonconventional pollutants (137 pesticide active ingredients and COD); (3) a class of nonconventional pollutants (organic pesticide active ingredients which incorporate one or more atoms of mercury, copper, cadmium, or arsenic within its molecular structure); and (4) three conventional pollutants (BOD, TSS and pH).

The major treatment units currently employed by plants in the industry are: biological oxidation, activated carbon, incineration, chemical oxidation, hydrolysis, steam stripping, multimedia filtration, resin adsorption, and metals separation.

III. Scope of This Rulemaking and Summary of Methodology

These proposed regulations expand the water pollution control requirements for the Pesticide Chemicals Manufacturing Category, henceforth referred to as the pesticide industry. In EPA's initial rulemaking (April 1978 and September 1978) effluent limitations guidelines based on the application of the best practicable technology (BPT) were promulgated for the pesticide industry. By contrast, in this rulemaking, EPA is proposing effluent limitations guidelines based on the application of the best conventional technology (BCT), best available technology (BAT), new source performance standards (NSPS), and pretreatment standard for existing and new source (PSES and PSNS). EPA is also proposing to expand the existing BPT effluent limitations guidelines to regulate direct wastewater discharges resulting from the manufacture of those pesticide active ingredients excluded from the initial BPT rulemaking (hereafter referred to as expanded BPT).

In this proposed regulation, the Agency is not making substantive changes to the previously promulgated BPT limitations in 40 CFR Part 455 Subparts, A, B, and C. However, for the sake of completeness, BPT limitations for Subparts A, B, and C, are printed in these proposed regulations. The only change being made to the previously promulgated BPT limitations is the use of a new format, which is not a substantive change. The Agency is not proposing or promulgating any changes to the following sections and does not solicit comments on these sections: 40 CFR 455.10 (a)-(e), 455.20, 455.21, 455.22, 455.30, 455.31, 455.32, 455.40, 455.41, 455.42.

Prior to undertaking a program to develop these regulations, EPA and its laboratories and consultants had to develop analytical methods for toxic pollutant detection and measurement. EPA then gathered technical data about the industry through implementation of screening and verification sampling programs, written surveys of the industry, and review of pertinent literature.

The Agency also evaluated actual raw waste load data obtained during these sampling programs along with data developed by the industry and submitted to EPA. The industry (both manufacturers and formulator/packagers) had not, however, generally monitored for priority pollutants and has not sampled all 280 pesticide active ingredients for priority pollutants. Accordingly, EPA evaluated the process chemistry of 280 pesticide active ingredients being considered for regulation in order to determine which priority pollutants were likely to be present in industry wastewaters, particularly those wastewaters which were not sampled during the screenining and verification sampling programs. The Agency reviewed the chemical reactions which took place, the raw materials used and the reaction conditions for the respective pesticide active ingredients. The review of the process chemistry provide a valuable source of information for the Agency to quantitatively determine the priority pollutants present or likely to exist in wastestreams. The results of these evaluations were combined to create a priority pollutant profile of the industry as a whole.

Concurrently, the Agency compiled and analyzed for both manufacturers and formulator/packagers historical and newly generated data documenting the effluent quality resulting from the application of several distinct control and treatment technologies (both in-plant and end-of-process) which were in use or are capable of being used to control or treat pesticide industry wastewaters. EPA considered the non-water quality environmental impacts of these technologies including impacts on air quality, solid waste generation, and energy requirements. This evaluation process enabled the Agency to identify and recommend certain technologies which could remove selected pollutants from industry wastewaters.

EPA then studied the pesticide industry to determine whether differences in raw materials, final products, wastewater treatability manufacturing and formulating/packaging processes, equipment, age, location and size of plant facilities, wastewater characteristics, method of disposal or other factors required the development of separate effluent limitations and standards for different segments of the industry.

EPA then identified the constitutents of wastewaters which should be considered for effluent limitations guidelines and standards of performance, as discussed in detail in Section IX of the Technical Development Document.

Two separate methodologies were utilized to estimate the costs to the manufacturing plants for installation and operation of the recommended treatment and control technologies. First, the Agency used cost curves to estimate recommended treatment unit costs. Treatment units were designed and costed for maximum pollutant concentrations. The cost curves were developed by standard engineering practices. Installation and operation costs were derived in this manner. These unit treatment costs were then combined in a building-block approach to yield the total subcategory cost.

Each plant was evaluated to determine what additional technology, if any, was necessary to achieve each of the appropriate treatment levels described above. The Agency then estimated the costs of installing and operating each recommended control technology at 117 manufacturing plants on a plant-by-plant basis. The formulation/packaging costs were generated based for three flow ranges (5000 GPD, 500 GPD, and 50 GPD) which were observed for the recommended methods of disposal. These costs are found in Sections XIII and XIV of the development document.

Consideration of all of the above factors enabled EPA to characterize various control and treatment technologies as proposed expanded BPT, BAT, NSPS, PSES, and PSNS. These proposed regulations do not, however, require the installation of any particular technology. Rather, they require the affected plants to achieve mass-based limitations and standards (expressed as kg/kkg or lbs/1000 lbs of product) which reflect the proper

operation of these technologies or equivalent technologies.

The proposed limitations and standards were calculated by multiplying the long-term average effluent level of a properly designed and operated recommended treatment unit by treatment variability factors. These factors were derived from a nonparametric statistical analysis of control technology performance data which included values above, at, or below the detection limit. By using this methodology, a daily maximum value and an average of daily values for 30 consecutive days were calculated for each parameter proposed for regulation (Section XV of the Technical Development Document describes this methodology in detail).

IV. Technical Data Gathering Efforts

The technical data gathering efforts involved several distinct, detailed activities which are summarized briefly in this section and in detail in Section III of the Technical Development Document.

In general, data gathering efforts were conducted by three principal means: (1) review of existing information relating to the pesticides industry (such as the BPT Administrative Record and pertinent literature) and procurement of additional information (through written surveys of the industry and contacts with representatives of governmental agencies and private research facilities); (2) implementation of field sampling and analysis programs (screening, verification, and industry self-monitoring); and (3) review of information gathered to support development of EPA regulations for other industrial categories.

Data from all of the above sources were evaluated and then subsequently consolidated into a single data base in order to facilitate development of these regulations.

A. Review and Survey Methodology

To develop these proposed regulations for both manufacturers and formulator/packagers, EPA began with a review of previous works on the pesticide industry. The major source of information employed in this regard was the Administrative Record to the BPT regulation, including the *Development Document for Final Effluent Limitations Guidelines for the Pesticide Chemicals Manufacturing Point Source Category* (EPA 440/1-78/060-e) and its appendices.

Upon review of the BPT Administrative Record, the need for additional information was indicated. Under the authority of Section 308 of the Act, the Agency sent a data collection questionnaire to 167 reported operating pesticide plants seeking information on the age and size of facilities, raw material usage, production processes employed, wastewater characteristics, and methods of wastewater control, treatment, and disposal. A follow-up questionnaire was sent to approximately 90 plants to clarify the record on each plant as well as to request specific pollutant data and treatability studies. The Agency sent a second round of follow-up questionnaires to approximately 50 plants concerning specific data points to be used primarily for statistical analyses.

The Agency also gathered data on the pesticides, industry from literature surveys, inquiries of professional contracts, and seminars and meetings. In addition, the Agency contacted all federal EPA regions, several State Environmental Agencies, and Federal and private research facilities for available pertinent data.

B. Sampling and Analytical Programs.

EPA focused its sampling and analyses on the 65 toxic pollutants designated in the Clean Water Act. This list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants. To make the task more manageable, therefore, EPA has selected 126 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for choosing these pollutants included the frequency of their occurrence in water, their chemical stability and structure, the amount of the chemical produced, and the availability of chemical standards for measurement. In addition to the 126 pollutants, EPA also checked for the presence, frequency and concentration of 112 nonconventional pesticide active ingredient pollutants in pesticide industry wastewaters.

EPA ran two sampling and analysis programs: screening and verification. The primary objective of both the screening and verification programs was to produce composite samples of wastewater from which determinations could be made of the concentration (weight per unit volume) and mass load (weight per unit time) of the pollutants present in pesticides wastewaters.

For the screening program, thirty manufacturing plants were selected that were representative of the pesticide industry. Each of 30 selected plants was sampled and analyzed for the presence of priority pollutants by an Agency contractor or the Regional Surveillance and Analysis laboratories. Raw wastewater samples were taken either before treatment or after minimal preliminary treatment (i.e., screening, primary sedimentation), depending upon accessibility to the wastewater stream. Treated effluent samples were taken either following physical/chemical treatment (for indirect dischargers) or after biological and/or physical/chemical treatment (for direct dischargers). EPA also sampled the raw water source (e.g., intake water) to determine the presence of pollutants prior to contamination by the manufacturing process. These samples were analyzed for the presence of organic priority pollutants by gas chromatography/mass spectrometry (GC/MS) and for the presence of priority pollutant metals by atomic adsorption spectrophotometry (AAS), as detailed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, (EPA, Cincinnati, Ohio, April 1977). The development of these methods of analysis has been described in the preamble to the proposed regulation for the Leather Tanning Point Source Category, 40 CFR Part 425, 44 FR 38749, July 2, 1979. A summary of all priority pollutant analyses reported from the screening program is presented in Section XIX-Appendix 6 of the Technical Development Document.

In the verification program, 16 plants which were representative of the pesticide industry, were selected and were sampled by Agency contractors. The purpose of the verification program was to verify the presence of the priority pollutants (identified during previous monitoring) and to determine the quantity of these pollutants, the nonconventional pesticide pollutants and BOD, COD, and TSS present in pesticide wastewaters prior to treatment and after the application of various control and treatment technologies employed in the industry.

Verification program sampling was conducted in accordance with the *Pesticides BAT Review Verification Sampling Protocol* (ESE, 1979, prepared for U.S. EPA, Research Triangle Park, NC). Composite samples were collected on three consecutive days for analysis of specific priority pollutants, the nonconventional pesticide pollutants under investigation, COD, BOD, TSS, ammonia and other selected parameters.

Specific priority pollutants to be analyzed during the verification program were selected on the basis of the best information available to the Agency. This necessitated a reliance on analytical data gathered during the screening program, information

provided by the manufacturers, and a review of the process chemistry. Because there are 117 plants in the industry and only 16 were sampled during the verification program, it was imperative to undertake an evaluation of each of the other pesticide processes not sampled in order to determine which priority pollutants were likely to be present for the industry as a whole. This review was accomplished using the process flow diagrams which were provided to EPA by each plant as part of the 308 Survey response as well as using existing BPT and other technical information. EPA determined that pollutants are likely to be present in process wastewaters if they are the final manufactured product, used as raw materials, or solvents or are commonly known or reported by-products or impurities of the reaction. All of the pollutants identified as likely to be present by this approach were compared to available known data and confirmed. All specific priority and nonconventional pesticide pollutants detected or, as a result of process chemistry review, likely to be present in significant concentrations in discharges from the 30 screening plants were analyzed during the verification program.

As the state-of-the-art for organic priority pollutant analyses matured, EPA refined the analytical methods developed for the screening program to keep pace with technological advancements. In addition, the Agency determined that the continued use of GC/MS may pose an inordinate economic burden upon the manufacturers who might be required to purchase and/or perform monitoring. As a result, the Agency switched from GC/MS analytical techniques to GC and HPLC techniques in the verification program because of lesser costs and the availability of equipment and improved GC and LC analytical procedures.

Methods employed during verification to analyze for the presence of priority pollutant metals were identical to those employed during the screening program. A summary of all priority pollutant analyses reported from the verification program is provided in Section XIX—Appendix G of the Technical Development Document. Nonconventional pesticide pollutants were analyzed by GC and HPLC methods developed by the industry or by EPA consultants.

Following completion of the verification program, the Agency also sought pesticide plants for a self-sampling and self-analysis program to be conducted for 30-to 45-day periods at specific plant/process waste streams. The purpose of the program was to obtain more statistically valid data on selected pollutants, and to incorporate those data into the Technical Development Document.

Pesticide manufacturing plants were recommended for participation in the self-sampling/self-analysis program based on a review of the adequacy of plant data, presence of toxic pollutants proposed for regulation, and whether potential BAT technology was currently in place. From this review, nine plants were recommended for the self-sampling program. To date, four plants have participated in the program and this data has been incorporated in this regulation process.

C. Data Transfer

If treatment data were absent or treatment performance judged indequate as compared with other available performance data in the pesticide industry, control and treatment technologies routinely accomplishing exemplary removal (achieving effluent limitations and standards) of specific pollutants in other industrial categories were evaluated to determine whether they would be applicable to the pesticide industry.

Performance data indicating the effectiveness of these technologies for removal of priority pollutants present in pesticide industry wastewaters were analyzed and, if judged applicable based upon design and historical performance of a treatment technology, were incorporated into the data base from which these proposed regulations were developed. EPA has determined that performance data from other industrial categories can be transferred to the pesticide industry because regardless of the origin of the wastewater, these certain technologies are routinely effective in removing specific pollutants. Specifically, data was transferred from the battery and electroplating industries for removal of metals by metals separation, from the organic chemicals industry for removal of volatiles by steam stripping, and from the electroplating industry for removal of cyanide by chemical oxidation. For a thorough explanation of the use of transfer data, see Section VI of the Technical Development Document.

The analysis of water samples for priority pollutants followed either (1) the relevant methods proposed in 40 CFR 136 for organic toxic pollutants under Section 304(h) of the Act 44 FR 69464, December 3, 1979; 44 FR 75028, December 18, 1979); (2) the relevant industry methods or (3) contractor developed methods which are similar to the methods proposed and/or promulgated pursuant to Section 304(h) of the Act. The respective methods are described in detail in the record to this rulemaking package. The Agency is currently reviewing the industry supplied analytical methods in order to determine their similarity to methods proposed and/or promulgated pursuant to 304(h) of the Act. If these methods are not found to be equivalent to the 304(h) methods, but the Agency determines they are acceptable, the Agency is considering proposing in January 1983 amendments to 40 CFR Part 455 for those industry methods for use in analyzing wastewater samples for compliance.

The acquisition, preservation and analysis of water samples for nonconventional pollutant pesticides followed either (1) the relevant methods promulgated in 40 CFR Part 136, (2) "minimally acceptable" EMSL developed methods, (3) the relevant industry methods or (4) contractor developed methods which are similar to the methods proposed and/or promulgated under Part 136. The respective methods are described in detail in the record to this rulemaking package. The Agency is intending to propose analytical methods in 40 CFR Part 455 for these nonconventional pollutant pesticides without 304(h) approved methods in a separate rulemaking package in January, 1983.

V. Available Wastewater Control and Treatment Technology

The control and treatment technologies that are currently employed to reduce pollutant discharges from pesticide manufacturing facilities include a broad range of in-plant controls, process modifications, and end-of-pipe treatment techniques. At most plants, programs have been implemented that combine elements of both in-plant control and end-of-pipe wastewater treatment.

In-plant control measures employed at plants in the pesticide industry include water reduction and reuse techniques, chemical substitution, and process changes. Techniques to reduce water use include the elimination of water use where applicable and the reuse and recycling of certain streams such as reactor and floor washwater, surface runoff, scrubber effluent and vacuum seal discharges. Chemical substitiution is utilized in both manufacturing and formulating to replace process chemicals possessing highly toxic or refractory properties with others that are less toxic or more amenable to treatment. Process changes include various measures that

reduce water use, wastewater discharge, and/or wastewater loadings while improving processing efficiency. Replacement of barometric condensers with surface condensers, replacement of steam jet ejectors with vacuum pumps, evaporation of process streams for by-product recovery, and the addition of spill control systems are examples of process changes that have been successfully employed in the pesticide industry to reduce polluant loadings while improving process efficiencies.

The end-of-pipe treatment technologies employed by the industry include: treatment by neutralization, equalization, steam stripping, chemical oxidation, metals separation, activated carbon, resin adsorption, and/or hydrolysis followed by primary clarification; secondary treatment by aerated lagoons, activated sludge, or trickling filter systems; and tertiary treatment by dual media filtration or activated carbon. Evaporation ponds or contract hauling are used for low flow streams. Incineration is used for waste which is refractory or toxic to biological systems.

At approximately 5 percent of the 42 direct discharging plants, no treatment is provided. At another 33 percent, only physical/chemcial treatment is provided. At the remaining 62 percent of the direct discharging plants, biological or equivalent secondary treatment is provided. Biologically treated effluents are further treated at 10 percent of all plants using dual media filtration and/or activated carbon.

At approximately 19 percent of the 37 indirect discharging plants surveyed, no treatment is provided. At 68 percent of the indirect discharging plants, physical/chemical treatment is employed. At 14 percent of the indirect dischargers, biological treatment (aerated lagoon or activated sludge) is employed.

VI. Industry Subcategorization

In developing these regulations, it was necessary to determine whether different effluent limitations and standards of performance were appropriate for different segments of the pesticide industry. Previously published BPT effluent limitations guidelines divided the industry into three subcategories: Organic Pesticide Chemicals Manufacturing; Metallo-Organic Pesticide Chemicals Manufacturing; and Pesticide Chemicals Formulating and Packaging. These regulations subdivide the BPT Organic Pesticide Chemicals Manufacturing Subcategory into eleven subcategories. The original BPT Metallo-Organic Pesticide Chemicals Manufacturing Subcategory and the Formulator/Packagers Subcategory have been retained as the 12th and 13th subcategories. The factors considered in identifying these subcategories included: raw materials used, products manufactured, production priocesses employed, wastewater characteristics and treatability, plant size, location and age, prior regulatory status and treatment costs. Detailed information on the basis for this subcategorization scheme is presented in Section VII of the Technical Development Document.

A. Development of Subcategorization Scheme

The subcategorization scheme proposed for this industry has been developed for priority pollutants and groups of priority pollutants which have been detected or are likely to be present in pesticides wastewaters, and the treatability of those priority pollutants. The priority pollutants likely to be present in pesticide industry wastewaters were identified from a process chemistry evaluation conducted for the 280 pesticide active ingredients being considered for regulation. Actual raw waste load data identifying the priority pollutants which had been detected in industry wastewaters were then combined with the results of the process chemistry evaluation to create a priority pollutant profile for each of these 280 pesticide active ingredients.

The Agency then evaluated the technical feasibility and performance of various treatment technologies being utilized, or capable of being utilized, to remove priority pollutants from industry wastewaters prior to discharge. The major treatment technologies selected were chemical oxidation, steam stripping, metals separation, pesticide removal (carbon/resin adsorption or hydrolysis) and biological oxidation. Seven combinations of these treatment technologies provide for removal of priority pollutants identified as detected or likely to be present in the pesticide industry wastewaters and, therefore, seven subcategories of pesticide manufacturers were initially established. These seven subcategories are identified in the following table according to the priority pollutants or groups of pollutants germane to each and the combination of treatment technologies recommended for the removal of those pollutants from wastewater.

Subcategory	Priority pollutants or pollutant groups detected or likely to be present in pesticide wastewaters	Treatment technologies recommended for priority pollutant removal
1	A	Pesticide removal, biological oxidation.
2	A, B	Steam stripping, pesticide removal, biological oxidation.
3	A, C	Metals separation, pesticide removal, biological oxidation.
4	A, B, D	Steam stripping, chemical oxidation, pesticide removal, biological oxidation.
5	A, B, C	Steam stripping, metals separation, pesticide removal, biological oxidation.chemical oxidation, pesticide removal, biological oxidation.
6	A, D	Chemical oxidation, pesticide removal, biological oxidation.
7	A, B, C, D	Steam stripping, chemical oxidation, metals separation pesticide removal, biological oxidation.

A=Pesticides, phenols, nitrosamines, dienes, TCDD.
B=Volatile aromatics, halomethanes, chlorinated ethanes and ethylenes, ammonia, haloethers, nitro substituted aromatices, dichloropropane(ene).
C=Metals.
D=Cyanide.

Subcategories 8 and 9 were created to establish priority pollutant limitations for those 49 pesticide processes which were previously regulated under BPT. Subcategory 10 was created to establish limitations for the majority of the 25 pesticide active ingredients and classes of pesticides which were excluded from the initial BPT regulation.

Some pesticide processes achieve no discharge of process wastewater because the wastewater generated during the process is totally reused, recycled, evaporated, incinerated without scrubber effluent, or because no wastewater is generated. Based on industry 308 Survey responses, 29 pesticides not previously regulated at zero discharge were identified which fit this definition. The 29 Pesticides are currently achieving no discharge of process wastewater. The need to address regulation of these 29 zero discharge pesticides resulted in the establishment of an eleventh subcategory for zero discharge compounds only.

The initial BPT rulemaking efforts established effluent limitations for only existing direct dischargers in the Metallo-Organic Pesticide Chemical Manufacturing Subcategory and the Pesticide Chemicals Formulating and Packaging Subcategory. This regulation proposes new source performance standards and pretreatment standards for these subcategories which are identified respectively as subcategories 12 and 13.

Plant location, age, and size were examined and found not to be factors in subcategorization.

B. Definition of Proposed Subcategories

For the purpose of defining the proposed subcategorization scheme, the priority pollutants present in industry wastewaters have been classified by principal group, as follows: volatile aromatics; halomethanes; haloethers; dichloropropane and dichloropropene; chlorinated ethanes and ethylenses; cyanides; metals; nitrosamines; phenols; dienes; and pesticides. The conventional and nonconventional pollutants of concern in this industry have been defined as BOD, COD, TSS, pH, ammonia, and pesticides. The subcategories of the pesticide industry for which regulations are propsoed in this rulemaking are defined as follows:

Subcategory 1: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, priority pollutant phenols, and/or nitrosamines and (b) conventional pollutants and COD.

Subcategory 2: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, priority pollutant phenols, and/or nitrosamines, (b) conventional pollutants and COD, and (c) priority pollutant volatile aromatics, halomethanes, chlorinated ethanes and ethylenes, and/or ammonia.

Subcategory 3: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants and (b) priority pollutant metals.

Subcategory 4: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, (b) priority pollutant volatile aromatics, halomethanes, and/or chlorinated ethanes and ethylenes, and (c) cyanide.

Subcategory 5: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants and priority pollutant dienes, (b) priority pollutant volatile aromatics, halomethanes, and/or ammonia, and (c) priority pollutant metals.

Subcategory 6: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants and (b) cyanide.

Subcategory 7: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, priority pollutant phenols, and/or nitrosamines, (b) priority pollutant volatile aromatics and/or halomethanes, (c) cyanide, and (d) priority pollutant metals.

Subcategory 8: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, priority pollutant pesticides, phenols, nitrosamines, and/or dienes.

Subcategory 9: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, priority pollutant pesticides, phenols, and/or dienes and (b) priority pollutant volatile aromatics, halomethanes, chlorinated ethanes and ethylenes, and/or ammonia.

Subcategory 10: Plants that manufacture pesticide active ingredients which generate process wastewater in which the following combinations of pollutant groups have been detected or are likely to be present in concentrations above design effluent levels: (a) nonconventional pesticide pollutants, (b) priority pollutant volatile aromatics, halomethanes, chlorinated ethanes and ethylenes, and/or ammonia, and (c) cyanide.

Subcategory 11: Plants that manufacture pesticide active ingredients which were not previously regulated at zero process wastewater discharge during BPT and which do not generate process wastewater or whose wastewater is not discharged because of recycle, reuse, evaporation, or incineration without scrubber discharge.

Subcategory 12, Metallo-Organic Pesticide Chemicals Manufacturing Subcategory: Plants that manufacture mercury, copper, cadmium, or arsenic-based pesticide active ingredients and were not previously regulated at zero discharge of process wastewater during BPT.

Subcategory 13, Pesticide Chemicals Formulating and Packaging Subcategory: Plants that formulate and/or package pesticide active ingredients which generate process wastewater in which priority, conventional and/or nonconventional pollutants have been detected or are likely to be present. These plants were not previously regulated during BPT.

VII. Expanded Best Practicable Technology Effluent Limitations

The factors considered in defining the best practicable control technology currently available (BPT) include: (1) the total cost of applying the technology relative to the effluent reductions that result, (2) the age of equipment and facilities involved, (3) the processes used, (4) engineering aspects of the control technology, (5) process changes, (6) non-water-quality environmental impacts (including energy requirements), (7) and other factors, as the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performances of plants within the industry of various ages, sizes, processes, or other common characteristics. When existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. BPT focuses on end-of-process treatment rather than process changes or internal controls, except when these technologies are common industry practice.

The cost/benefit inquiry of BPT is a limited balancing, committed to EPA's discretion, such that it does not require the Agency to quantify benefits in monetary terms. See e.g., *American Iron and Steel Institute* v. *EPA,* 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of existing discharges, the volume and nature of discharge expected after appliation of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required level of pollution

control. The Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

Twenty-five pesticides and classes of pesticides were specifically excluded from coverage for any parameter under the prior BPT effluent limitations guidelines due to lack of adequate information. The current study has, however, generated additional information on 21 of these pesticides and classes of pesticides. Accordingly, BPT limitations for BOD, COD, TSS and pH can now be proposed for these 21 pesticides. EPA has considered two options for expansion of the BPT regulation to cover the 21 pesticides and pesticide classes. The remaining four pesticides which were excluded from the initial regulation for this category will continue to remain excluded from regulation in this category. Dimethyl Phthalate will be regulated under the Organic Chemical regulations. Gibberellic Acid and Naphthalene Acetic Acid are growth regulators which are excluded because of low production volume. The remaining compound was erroneously listed under both the trade name, Bisethylxanthogen, and the common name, EXD. This compound will be regulated under expanded BPT under its common name.

(A) *Option 1*—Base expanded BPT effluent limitations for control of BOD, COD, TSS and pH on the existing BPT model treatment technology of pesticide removal (which consists of hydrolysis or sorption onto materials such as activated carbon) followed by biological oxidation. An equivalent level of technology is currently installed and operating at all plants which were excluded from the initial rulemaking; therefore, little or no economic impact is projected. The estimated pollutant removal by those plants with Option 1 technology currently installed is presented as follows:

Pollutant	Pollutant removal (pounds per year)
BOD	5,610,000
COD	12,800,000
TSS	905,000

(B) *Option 2*—Base BPT effluent limitations for control of BOD, COD, TSS and pH on Option 1 followed by multi-media filtration, Implementation of this option would result in the following increment of pollutant removal beyond Option 1.

Pollutant	Pollutant removal (pounds per year)
BOD	40,000
COD	460,000
TSS	96,400

The additional increment of capital cost beyond Option 1 for all direct dischargers to implement Option 2 would be $1,260,000 with incremental annual costs of $298,000.

BPT Selection and Decision Criteria—EPA has selected Option 1 as the basis for proposing expanded BPT effluent limitations. Implementation of this option will establish a minimum uniform national guideline for the direct discharge of BOD, COD, TSS and pH for the entire industry. While implementation of Option 2 would effect greater removal of these pollutants over Option 1, the increased costs would not be justified by the effluent reduction benefits.

VIII. Best Conventional Technology (BCT) Effluent Limitations

The 1977 amendments added Section 301(b) (2) (e) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Section 304(B)(4) designated the following as conventional pollutants: BOD, TSS, fecal coliform, and pH. The Administrator designated oil and grease as "conventional" on July 30, 1979, 44 FR 44501.

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 F.2d 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.) The Agency has corrected data errors and applied a second cost test. The Agency proposed the revised BCT methodology on October 29, 1982, but EPA is reserving BCT limitations for the Pesticides Chemical Category at this time for all subcategories except metallo-organic pesticide chemicals manufacturing (Subpart C, 455.33), Pesticide Chemicals Formulating and Packaging, (Subpart B, 455.43) and Subcategory 11 (Subpart N, 455.153), which are being proposed equal to BPT. Because BPT for Subparts B and C is no discharge of process wastewater, the same limitations shall be applicable for BCT. Similarly, because all products in Subpart N (445.153) are currently manufactured at no discharge of process wastewater, therefore BPT will be proposed at zero discharge as well as BCT.

IX. Best Available Technology (BAT) Effluent Limitations

The factors considered in establishing the best available technology economically achievable (BAT) level of control include non-water quality environmental impacts such as energy requirements, air pollution and solid waste generation, the costs of applying the control technology, the age of process equipment and facilities, the process employed, process changes, the engineering aspects of applying various types of control techniques, and such other factors as the Administrator deems appropriate. (Section 304(b)(2)(B)). In general, the BAT technology level represents, at a minimum, the best existing economically achievable performance among plants with shared characteristics. Where existing performance is uniformly inadequate, BAT technology may be transferred from a different subcategory or industrial category. BAT may also include process changes or internal controls which are not common industry practice. The Agency has attempted to base its limitations on technologies that specifically apply to the wastestreams to be treated.

The statutory assessment of BAT considers costs but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle*, 590 F. 2d 1011, (D.C. Cir. 1978)). In assessing the proposed BAT,

however, the Agency has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges expected after application of BAT, and the costs and economic impacts of the required pollution control levels.

Despite this consideration of costs, the primary determinant of BAT is the effluent reduction capability of the control technology. As a result of the Clean Water Act of 1977, the achievement of BAT has become the national means of controlling the discharge of toxic pollutants from direct discharging plants.

Thirty-four different priority pollutants of concern can potentially be discharged from manufacturing plants in the pesticide industry. These pollutants are listed in Appendix B. Seventy-six different nonconventional pesticides of concern are directly discharged from plants in the pesticide industry. These pollutants are listed in Appendix C (the remaining 25 pollutants listed in Appendix C have zero wastewater discharge). EPA has selected four available BAT technology options for consideration that will reduce the discharge of these priority pollutants and the nonconventional pesticide pollutants of concern by pesticide manufacturers. For a more detailed discussion, see Section XII of the Technical Development Document.

(A) *Option 1*—Base effluent limitations for control of priority and nonconventional pesticide pollutants on the proper application and operation of the technologies that formed the basis of the BPT effluent limitations. The technologies on which the BPT regulation is based include pesticide removal by adsorption or hydrolysis followed by biological treatment. There would be no removal of additional pounds of toxic pollutants as well as no incremental cost for direct dischargers associated with this option.

(B) *Option 2*—Base effluent limitations for control of priority and nonconventional pesticide pollutants on the proper application and operation of the technologies that formed the basis of BPT effluent limitations (pesticide removal by adsorption or hydrolysis followed by biological treatment) in addition to steam stripping, chemical oxidation and/or metals separation as required. Implementation of this option would result in the removal of additional pounds of toxic pollutants (by priority pollutant/pollutant group) beyond Option 1, as follows:

Pollutant or pollutant group	Pollutant removal (pounds per year)
Volatile aromatics	140,000
Halomethanes	116,000
Cyanide	10,800
Phenols	54,600
Metals	18,500
Nitrosamines	475
Dienes	338
Chlorinated ethanes	2,000

In addition, Option 2 would remove 440,000 lbs. of pesticide active ingredients per year beyond Option 1. There would be an incremental capital cost of $30,000,000 and an incremental annual treatment cost (includes operating and maintenance, depreciation, and interest) of $25,400,000 for direct dischargers associated with this option. Selection of this option is projected to result in the closure of two production lines and one plant.

(C) *Option 3*—Base effluent limitations for control of priority and nonconventional pesticide pollutants on Option 2 followed by multimedia filtration. Implementing this option would result in the removal of 192 lbs/year of priority pollutant metals beyond Option 2; it would not incrementally increase pollutant removal for any other priority pollutant group. There would be an incremental capital cost of $3,980,000 and an incremental annual treatment cost (includes operating and maintenance, depreciation and interest) of $1,150,000 for direct dischargers associated with this option. There will be no additional closures beyond those projected in Option 2.

(D) *Option 4*—Base effluent limitations for control of priority and nonconventional pesticide pollutants on Option 3 followed by adsorption onto activated carbon. Implementation of this option would result in the removal of additional pounds of toxic pollutants beyond Option 3, as follows:

Pollutant or pollutant group	Pollutant removal (pounds per year)
cyanides	11
Phenols	497
Chlorinated ethanes	202
Dienes	44
Metals	95

In addition, Option 4 would remove 1,960 lbs. of pesticide active ingredient pollutants per year beyond Options 3. There would be an incremental capital cost of $15,400,000 and an incremental annual treatment cost (including operating and maintenance, depreciation, and interest) of $19,900,000 for direct dischargers associated with this option. There will be no additional closures beyond those projected in Option 2.

BAT Selection and Decision Criteria for Pesticide Manufacturers—EPA has selected Option 2 as the basis for proposed BAT effluent limitations. The Agency rejected Option 1 because the BPT technologies do not adequately provide for the removal of certain priority pollutant groups of concern, e.g., volatile aromatics, halomethanes, chlorinated ethanes, cyanide, and metals. The Agency rejected Option 3 because it is relatively ineffective in removing priority pollutants and the majority of nonconventional pesticide pollutants. The Agency rejected Option 4 due to its extremely high cost.

X. New Source Performance Standards (NSPS)

A. Pesticide Manufacturers

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. At new manufacturing plants, the opportunity exists to design the best and most efficient pesticide processes and wastewater treatment facilities. Therefore, Congress directed EPA to consider the best demonstrated process changes, inplant controls, and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible. Data from existing pesticide manufacturing plants were used to define a model direct discharger for each subcategory representing a new source.

Priority and nonconventional pesticide pollutants proposed for control by this regulation include those listed for BAT. In addition, BOD, COD, TSS, pH and the 36 nonconventional pesticide pollutants listed in Appendix D, which were previously regulated in BPT for direct discharge, are proposed for regulation under NSPS. For control of priority, nonconventional and conventional pollutants, EPA considered three NSPS options.

(A) *Option 1*—Base effluent limitations for control of priority, nonconventional, and conventional pollutants on the selected BAT Option 2 technologies of pesticide removal followed by biological treatment, in addition to steam stripping, chemical oxidation, and/or metals separation, as required. Implementation of this option would achieve significant removal of the pollutants of concern expected to be generated by a representative new source. The pollutant removals that

would be achieved by a representative new source are as follows:

Pollutant of pollutant group	Pollutant removal pounds per year
Volatile Aromatics	3,300
Halomethanes	2,760
Cyanide	257
Phenols	1,300
Metals	440
Chlorinated Ethanes (ethylenes)	48
Nitrosamines	11
Dienes	8
Pesticides:	
Priority Pollutants (9)	759
Nonconventional (173)	10,500
BOD	209,000
COD	478,000
TSS	33,600

Capital costs for installation of this technology level will range by subcategory from zero dollars (no direct discharger in a subcategory) to 12.5 million dollars (maximum treatment) per plant. Annual operation and maintenance costs will range from 0.014 to 10.5 million dollars per plant. This cost variation reflects differences in the degree of treatability or the differences in recoveries obtainable. These costs do not represent incremental costs from BAT.

(B) *Option 2*—Base effluent limitations for control of priority, nonconventional, and conventional pollutants on the Option 1 technologies followed by mult-media filtration. Implementation of this option would result in addition removal of specific pollutants beyond Option 1 by a representative new source, as follows:

Pollutant or pollutant group	Pollutant removal (pounds per year)
Metals	4
BOD	1,430
COD	17,100
TSS	150,000

Capital costs for installation of this technology level will range from $0 to $818,000 per plant. Annual operation and maintenance costs will range from $0 to $64,000 per plant.

(C) *Option 3*—Base effluent limitations for control of priority, nonconventional, and conventional pollutants on the Option 2 technologies followed by tertiary activated carbon treatment. Implementation of this option would result in additional removal of specific pollutants beyond Option 2 by a representative new source, as follows:

Pollutant or pollutant group	Pollutant removal (pounds per year)
Cyanide	0.2
Phenols	12
Metals	2
Chlorinated Ethanes (Ethylenes)	5
Dienes	0.1
Pesticides:	
Priority Pollutants (9)	4
Nonconventional (137)	47
BOD	1,430
COD	34,300
TSS	714

Capital cost for installation of this technology level will range from $0 to $4.81 million per plant. Annual operation and maintenance costs will range from $0 to 5.1 million per plant.

NSPS Selection and Decision Criteria for Pesticide Manufacturers—EPA has selected Option 1 as the basis for proposed NSPS for pesticide manufacturers. Option 1 insures that the discharge of 34 priority pollutants, 137 nonconventional pollutant pesticides, 3 conventional pollutants, and COD will be adequately controlled without resulting in the imposition of any additional costs to new sources in this industry which would not be borne by existing sources. Accordingly, these proposed NSPS would not result in any barriers to entry. The Agency rejected Option 2 due to its relatively ineffectual removal of priority pollutants and the majority of nonconventional pollutant pesticides. The Agency rejected Option 3 due to its extremely high costs.

B. Select Metallo-Organic Pesticide Manufacturers

New metallo-organic pesticide manufacturers of mercury, cadmium, copper, and arsenic-based products have the opportunity to design the best available pesticide manufacturing processes and wastewater treatment facilities. Existing manufacturers of these pesticides were required to achieve zero discharge of process wastewater under existing BPT.

EPA has selected the BPT technology of total recycle and reuse, evaporation, or contract hauling of all process wastewater as the basis for NSPS for new select metallo-organic pesticide manufacturers. The Agency believes that the processes used to manufacture pesticides in this subcategory at new sources will be identical or comparable to those used by facilities which achieve the BPT limitations. Selection of this technology level ensures the use of the most efficient wastewater control technologies at new sources. Since the NSPS are identical to standards for existing sources, there will be no barriers to entry by new sources. Capital costs for installation of this technology level will range from $20,300 for spray evaporation to $198,000 for solar evaporation per plant for an average flow of 500 GPD. Annual operation and maintenance costs will range from $11,500 for spray evaporation to $13,700 per plant for solar evaporation. There are no capital costs associated with contract hauling.

C. Pesticide Formulator/Packagers

At new formulating/packaging facilities, the opportunity also exists to design the best and most efficient pesticide processes and wastewater treatment facilities such that reductions in the use of and/or discharge of both water and toxic pollutants will be maximized. The BPT effluent limitation currently being applied to existing formulating/packaging facilities is zero discharge of process wastewater.

EPA has selected the BPT technology of total evaporation or contract hauling of all process wastewater as the basis for NSPS effluent limitations for new formulating/packaging facilities. The Agency believes that the volume and nature of pollutants to be generated at new sources are comparable to those generated at existing sources because there are only three basic types of formulations operations: dry, solvent and water based with vessel wash out being the major source of pollutants. Selection of this technology level ensures the use of the most efficient pesticide formulating/packaging processes and wastewater treatment technologies at new sources. Since the NSPS are identical to the standards for existing sources, there will be no barriers to entry by new sources. Capital costs for installation of this technology level will range from $16,400 for spray evaporation to $160,000 for solar evaporation per plant, for an average flow of 500 GPD. There are no capital costs associated with contract hauling. Annual operation and maintenance costs will range from $10,500 to $28,000 per plant for evaporation.

XI. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. 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. The General Pretreatment Regulations which serve as the framework for the proposed pretreatment standards are in 40 CFR Part 403, 46 FR 9404 (January 28, 1981).

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 removal by the BAT model treatment system. A study of 40 well-operated POTWs with biological treatment and meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70 percent. In contrast, BAT level treatment by the industrial facility can achieve removal in the area of 97 percent or more. Thus it is evident that metals do pass through POTWs. As for toxic organics, data from the same POTWs illustrates a wide range of removal, from 0 to greater than 99 percent. The POTW's effluent discharge of specific toxic pollutants ranged from 0 to 4.3 milligrams/liter. Many of the pollutants present in pesticide manufacturing wastes, at sufficiently high concentrations, can inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW use of sludge management alternatives, including the beneficial use of sludges on agricultural lands.

A. Pesticide Manufacturers

EPA has selected two PSES technology options for pesticide manufacturers. The priority and nonconventional pesticide pollutants proposed for control by this regulation are the same as those proposed for regulation by NSPS.

(A) *Option 1*—Base pretreatment standards for control of priority and nonconventional pesticide pollutants on pretreatment technology of pesticide removal (carbon/resin adsorption or hydrolysis) in addition to steam stripping, chemical oxidation, or metals separation, as required. Implementation of this option would result in the removal of significant amounts of nonconventional and priority pollutants from the indirect discharge manufacturers' raw waste load prior to discharge to the POTW. The amount removed by pollutant/pollutant group is as follows:

Pollutant or pollutant group	Pollutant removal (pounds per year)
Volatile Aromatics	95,100
Halomethanes	87,000
Cyanide	8,117
Phenols	37,440
Metals	13,620
Dienes	249

In addition, 3.331×10^5 pounds of nonconventional pesticides would be removed per year through implementation of the option.

There would be an incremental capital cost of $16.0 million and an incremental annual operating and maintenance cost of $7.54 million for indirect dischargers associated with this option. Selection of this option is projected to result in the closure of two plants and five production lines.

(B) *Option 2*—Base pretreatment standards for control of priority and nonconventional pesticide pollutants on the Option 1 technologies followed by biological treatment. Implementation of this option would result in the removal of additional pounds of priority pollutants by pollutant or pollutant group beyond Option 1 as follows:

Pollutant or pollutant group	Pollutant removal (pounds per year)
Volatile Aromatics	10,380
Halomethanes	8,900
Cyanide	16.5
Phenols	3,744
Metals	360
Chlorinated Ethanes and Ethylenes	1,526
Dienes	6

In addition, 1500 pounds of priority pollutants (other than those listed) and of nonconventional pesticides per year would be removed beyond Option 1.

There would be incremental capitol cost of $33.9 million and an incremental annual treatment cost of $6.4 million for indirect dischargers associated with this option. Selection of this option is projected to result in the closure of 9 plants and 8 production lines.

PSES Selection and Decision Criteria for Pesticide Manufacturers—EPA has selected Option 1 as the basis for proposed PSES for pesticide manufacturers. The selection of Option 1 control technology ensures significant effluent reduction benefits of all pollutant classes, of discharges of the toxic metals zinc and copper and minimal sludge disposal and interference problems. The Agency rejected Option 2 because of its hight cost and resultingly severe economic impacts.

B. Select Metallo-Organic Pesticide Manufacturers

Existing direct discharge manufacturers of metallo-organic pesticides containing mercury, copper, cadmium or arsenic were regulated at zero discharge during BPT. Additional technical and economic data have been collected for this portion of the industry subsequent to promulgation of the BPT regulation. However, since manufacturers of these pesticides conduct the same types of process operations regardless of mode of discharge, the BPT data base can be applied to the indirect discharge metallo-organic manufacturers. EPA has therefore selected the BPT technology of total recycle or reuse, evaporation, or contract hauling of process wastewater as the basis for proposed PSES for metallo-organic pesticide manufacturers of mercury, cadmium, copper, and arsenic-based products. Implementation of this option will establish regulatory consistency with the BPT effluent limitation. Annual and capital costs for this technology level will vary depending on the treatment used. For example, if Solar Evaporation is used, capital costs for installation of this technology in a 500 GPD flow will range from $52,100 to $198,000. Annual operating and maintenance costs will range from $7,360 to $13,700.

C. Pesticide Formulator/Packagers

Existing direct discharge formulator/packagers or pesticide active ingredients were regulated at zero discharge of process wastewater during BPT. The data collected to support the initial regulation show that approximately 90% of all formulator/packagers survived do not generate any process wastewater. The remaining 10% generate low volume, highly concentrated wastewater which is typically evaporated, contract hauled, or discharged to a POTW. Because the wastewater flows, generated at formulating/packaging plants are small, total evaporation or contract hauling is less costly than treating and monitoring the wastewaters prior to discharge.

Additional technical and economic data have been collected for this portion of the industry subsequent to promulgation of the BPT regulation. The Agency assumes that formulator/packagers conduct the same types of operations and incur the same levels of cost regardless of mode of discharge. The Agency solicits any comments from the industry pertaining to this matter. Accordingly, the Agency is basing pretreatment standards for indirect discharger formulator/packagers on the

BPT technology of total evaporation or contract hauling. Implementation of this option will establish regulatory consistency with the BPT effluent limitation for direct dischargers. Annual and capital costs for implementation of this technology level will be the same as the costs for the Metallo-organic subcategory.

D. Compliance Date

The Agency is proposing a compliance date for PSES for the Pesticide Chemicals Category of July 1, 1984. The Agency believes that this date is achievable because a significant amount of the indirect discharging plants have already installed this treatment. The Agency solicits comments on whether this compliance date will be achievable.

XII. Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. These standards are intended to prevent the discharge of pollutants which pass through, interfere with or are otherwise incompatible with a POTW. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant control measures, and end-of-pipe treatment, and to use plant site selection to ensure adequate treatment system installation.

A. Pesticide Manufacturers

The pretreatment technologies which the Agency has selected as the basis for PSNS are the same as those selected for PSES. The priority and nonconventional pesticide pollutants proposed for control by this regulation are the same as those proposed for regulation by NSPS. Accordingly, there will be no barrier to entry for new sources.

The pollutant removal that would be achieved by a representative new source are presented below for each option.

Option 1

Pollutant or pollutant group	Pollutant removal (pounds per year)
Volatile aromatics	2,570
Halomethanes	2,350
Cyanide	219
Phenols	1,010
Metals	368
Dienes	7
Nonconventional pesticides	9,000

Option 2

Pollutant or pollutant group	Pollutnat removal (pounds per year)
Volatile aromatics	280
Halomethanes	240
Cyanide	0.4
Phenols	101
Metals	10
Chlorinated ethandes and ethylenes	41
Dienes	0.2
Nonconventional pesticides	40

Capital costs in millions of dollars per plant will range from zero to 5.53 for the installation of Option 1 technology and from zero to 8.43 for Option 2 technology. The annual operating and maintenance cost in millions of dollars per plant will range from zero to 2.46 for Option 1 Technology and from zero to 2.90 for Option 2 technology.

XIII. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMPs"). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category, and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant.

Although EPA is not proposing them at this time, future BMPs could require dikes, curbs, or other measures to contain leaks and spills and could require the treatment of toxic pollutants in these wastes.

XIV. Regulatory Status of Pollutants

A. Priority Pollutants Regulated

The priority pollutants the Agency is proposing to regulate are found in Subpart O of the regulation. The requirements of Subpart O are applicable to all regulations (Subparts A–N). Whenever a discharger manufactures a pesticide active ingredient listed in Column A in Subpart O § 455.160 that discharger must meet the effluent limitations and standards for the priority pollutants specified in Column C. Column B is included for informational purposes only. These particular priority pollutants are either the final manufactured product, used in the manufacturing processes, (e.g. solvents), used as raw materials or are commonly known or reported by-products or impurities in the manufacture of the pesticide active ingredients. Accordingly, a discharger which manufactures pesticide active ingredients will find the priority pollutant for which he is regulated in Column C.

B. Priority Pollutants Excluded

Paragraph 8 of the Settlement Agreement contains provisions authorizing EPA to exclude toxic pollutants and industry subcategories from regulation under certain circumstances. Paragraph 8(a)(iii) of the Revised Settlement Agreement authorizes the Administrator to exclude from regulation: toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods; or toxic pollutants present in amounts too small to be effectively reduced by available technologies; or toxic pollutants present only in trace amounts and neither causing nor likely to cause toxic effects; or toxic pollutants detected in the effluent from only a small number of sources within a subcategory and uniquely related to only those sources; or toxic pollutants that will be effectively controlled by the technologies upon which are based other effluent limitations and standards; or toxic pollutants for which more stringent protection is already provided under Section 307(a) of the Act. Appendix E lists the 70 toxic pollutants excluded from these regulations for all subcategories pursuant to these criteria.

The Agency is also proposing to exclude three priority pollutants, 1,2-dichlorobenzene, 1,4-dichlorobenzene, and 1,2,4-trichlorobenzene, from regulation in processes other than those in which they are the manufactured product because the discharge of these pollutants will be effectively controlled by the regulation of chlorobenzene, where these three pollutants can be controlled by the same technology which reduces chlorobenzene discharge.

EPA is not proposing to regulate at this time the 22 priority pollutants listed in Appendix F because adequate monitoring and/or control data are not available. In addition, the Agency is not proposing to regulate at this time two priority pollutants, bis (2-chloroethyl) ether and 1,3-dichloropropene in processes other than those in which they are the manufactured product because adequate monitoring data are not available. These pollutants have either been detected or, as a result of process chemistry review, are likely to be present in pesticide wastewaters. However, limited information exists on their concentration in the industry. Therefore, EPA cannot establish uniform national standards and limitations controlling the discharge of these compounds at this time. EPA specifically solicits comments from industry, states

and the public on whether these priority pollutants are present, at what levels, and what treatment technology could be utilized to achieve effluent limitations and standards for these pollutants. The Agency is considering regulating these priority pollutants in the future pending collection of available data.

C. Nonconventional Pollutants Excluded

There are 125 nonconventional pesticides in the scope of this study that currently lack acceptable analytical methods and/or adequate data and which the Agency proposes to exclude from regulation pending the development of analytical methods and the collection of an adequate data base. These nonconventional pesticide pollutants are listed in Appendix G.

Pesticide intermediates are materials resulting from each reaction step in the manufacture of pesticide active ingredients, except for the final synthesis step, and are, in most cases, nonconventional pollutants. Process wastewater resulting from the production of pesticide intermediates may be incidentally covered by this regulation if it contains priority, conventional, or other nonconventional pollutants proposed for regulation and if it is comingled with pesticide active ingredient process wastewater or if the Agency had adequate data to regulate intermediates. Nonconventional pesticide intermediates which are not comingled with pesticide active ingredient process wastewater are often common to many chemical processes other than pesticides production and would therefore be covered by other effluent limitation guidelines and standards, such as the organic chemicals regulations soon to be proposed. If, however, these waste streams are not covered by other industrial regulations, the permit writer may on a case-by-case basis write BPJ (Best Professional Judgment) permits.

The nonconventional pollutants ammonia and manganese have been detected at significant concentrations in segments of the pesticide industry (defined in the Development Document) but not across entire subcategories, therefore, national limitations and standards are not proposed. Ammonia nitrogen has been detected in raw waste loads at levels up to 1500 mg/1 and in treated effluents at levels up to 163 mg/1. Manganese can be present in pesticide wastewaters resulting from the manufacture of dithiocarbamate pesticides such as mancozeb. It is therefore recommended that permit writers control the discharge of these pollutants on a case-by-case basis. Ammonia effluent levels of 50 mg/1 can be achieved by stream stripping or by nitrification in biological treatment systems. Manganese effluent levels of 0.11 mg/1 can be achieved by metals separation treatment technology.

D. Conventional Pollutants Excluded

Oil and grease and fecal coliform are not covered in this regulation. High-molecular weight fatty acids and other such sources of oil and grease, and fecal coliform, are not generally found in pesticide process wastewater. The permit writing authority is encouraged to review plant data and if necessary, include limitations for these pollutants in the permit on a case-by-case basis.

XV. Costs, Cost Effectiveness, and economic impacts

In order to estimate the economic effects of today's proposal, EPA reviewed its incremental effect on the pesticide manufacturing and formulating/packaging facilities covered by the proposed regulation. This analysis is set forth in the *Economic Analysis of Proposed Effluent Standards and Limitations for the Pesticides Industry*, EPA 440/2–82–009. This report details the investment and annual costs for the industry and plants covered by the proposed regulation. Compliance costs are based on engineering estimates of the capital requirements for the effluent control systems described earlier in this preamble. Cost estimates for hazardous waste disposal are also included in the analysis. All cost estimates in this preamble are in 1982 dollars.

A. Economic Impact Methodology

The economic analysis used to two-level approach in predicting the effects of these regulations. The analysis estimated the structure and elasticity of demand for pesticides on an aggregate industry basis. This yielded an estimate of the price elasticity of demand that indicates the general ability of producers to increase prices and recover pollution abatement expenditures. Individual establishment viability was based on a qualitative examination of volume of production, product mix, market share and substitution of competing pesticides. This approach yielded estimates of price increases, production and employment losses, and potential product line and plant closures that could result from the imposition of these regulations.

B. Impact Summary

EPA has identified 117 plants that manufacture active ingredient pesticides which will be covered by these regulations. Total investment for BPT, BAT and PSES is estimated to be $45.9 million, with annual costs (including depreciation and interest) of $36.3 million. Three plants and seven pesticide lines are projected to discontinue operations as a result of these proposed regulations. There is one additional plant for which there is insufficient plant specific information to determine whether the proposed regulation would cause closures. The Agency is currently soliciting data from this particular plant. The proposed regulations will also affect approximately 850 indirect formulating/packaging plants (the direct discharge formulating/packaging plants were regulated at zero discharge under BPT). Given that cost for direct discharge formulator/packagers are small, and that there is no distinction between direct and indirect discharge formulator/packagers processes, the costs for direct and indirect formulator/packagers is assumed to be at an equivalent level. Therefore, costs to comply with Pesticide regulation are small for indirect formulator/packagers in the industry. Regulations for new sources are not expected to discourage entry of new plants into the pesticides industry. Prices for active ingredient pesticides are estimated to increase by less than 1 percent and employment to decrease by 0.3 percent or by approximately 50 people. In summary, EPA concludes that the economic impacts of additional environmental control are justified in light of the benefits associated with compliance with these limitations and standards. Specific economic effects associated with the separate regulations are discussed below.

BPT: Additional coverage of pollutants is proposed for nineteen pesticides and two classes of pesticides which were not regulated during the original BPT rulemaking. An equivalent level of technology is currently installed and operating at all plants which were excluded from the initial rulemaking. The Agency concludes that they are capable of meeting the proposed expanded BPT limitations at no additional cost. Thus, no economic impacts are estimated to result from expanding the coverage of BPT limitations.

BAT: Thirteen direct discharge plants are expected to incur additional capital investment costs of $30.1 million Annual costs of compliance (including operation and maintenance, depreciation, and interest) are estimated at $23.5 million. The Agency expects that this option will increase the cost of production by 0.5 percent. One plant and two production

lines may close as a result of these regulations.

PSES: Seventeen indirect discharging plants are estimated to require additional control at a capital cost of $15.8 million for equipment and an annual cost (including operation and maintenance, depreciation, and interest) of $10.8 million. Two plants and two production lines may close as a result of these standards.

PSNS/NSPS: Regulations for new sources are not expected to discourage entry or result in differential impacts on new plants. The requirements for new sources are identical to those for existing sources. Current capacity is capable of meeting the projected demand for pesticides.

C. Cost Effectiveness

EPA has conducted an analysis of the incremental removal cost per pound equivalent for each of the proposed technology-based options. A pound equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The use of "pound equivalent" gives relatively more weight to removal of more toxic pollutants. Thus for a given expenditure, the cost per pound equivalent removal would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. This analysis is included in the record of the Pesticide Chemicals Category. EPA invites comments on the methodology used in this analysis.

D. 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. The analysis may be done in conjunction with or as part of any other analysis conducted by the Agency. A small business analysis is included in the economic impact analysis. The economic analysis described above indicates that there will not be a significant impact on any segment of the regulated manufacturing population, large or small. Value of production is the primary variable used to distinguish firm size. The smallest size category includes 26 facilities (22.5 percent of the total facilities) with annual revenues less than $10 million each. The Agency invites comment on this size definition. Annualized BAT and PSES compliance costs for these small manufacturing plants are $0.374 million and investment costs are $0.695 million. The economic analysis details the impacts of this proposed rule and other regulatory options the Agency considered. For this proposed rule, there are no significant impacts on small firms; therefore a formal Regulatory Impact Analysis is not required.

E. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules imposes an annual cost to the economy of $100 million or more or meet other economic impact criteria. EPA does not consider these proposed rules for Pesticide Chemicals Category to be a major regulation because its annualized cost is $46.4 million and it meets none of the other criteria specified in paragraph (b) of the Executive Order. Therefore, the proposed regulation does not require a formal regulatory impact analysis. This rulemaking satisfies the requirements of the Executive Order for a non-major rule.

XVI. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggrevate other environmental problems. Therefore, 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, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption and has sent a copy of this proposed regulation to the appropriate EPA offices responsible for these programs. While it is difficult to balance pollution problems against each other and against energy use, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the non-water quality environmental impacts associated with the proposed regulations:

Air Pollution.—Implementation of expanded BPT, BAT, NSPS, PSES, and PSNS are not anticipated to result in any incremental increase in air pollution from the pesticide industry. Information on which this estimate is based is contained in Section VIII of the Technical Development Document.

Solid Waste.—EPA has considered the affect these proposed regulations would have on the accumulation of solid waste, including hazardous waste as defined under § 3001 of the Resource Conservation and Recovery Act (RCRA). EPA estimates that the total solid, including hazardous waste generated as a result of attainment of expanded BPT, BAT, and PSES will increase by about 1.2 percent of the present industry total. Information on which this estimate is based is contained in Sections VIII, X, XII, and XIV of the Technical Development Document.

EPA's Office of Solid Waste has analyzed the solid waste management and disposal costs required by the industry's compliance with the RCRA requirements and has published some results in 45 FR 33066 (May 19, 1980). Fourteen solid waste streams currently generated at pesticide plants have been listed as hazardous in regulations recently promulgated by the Agency under Subtitle C of RCRA (See 45 FR 33066 May 19, 1980). Thirty-two additional pesticide active ingredients have been designated as toxic in Part III of the May 19, 1980 regulation. It is currently estimated that an additional 1.7 percent of the industry could be subject to the comprehensive RCRA program establishing requirements for persons handling, transporting, treating, storing, and disposing of solid waste, including hazardous waste, due to the implementation of the proposed expanded BPT, BAT, and PSES. The annual increase in RCRA costs due to these proposed regulations is estimated to be $90,500, or approximately 0.2 percent of the total current estimated cost for the industry.

C. *Energy Requirements.*—EPA estimates that the attainment of proposed expanded BPT, BAT, and PSES will increase energy consumption by about 122 percent over present industry use. Information on which this estimate is based is contained in Section VIII of the Technical Development Document.

XVII. Regulatory Implementation

A. Upset and Bypass Provisions

A recurring issue is whether industry limitations and standards should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. EPA believes that upset provisions are necessary because such upsets will inevitably occur due to limitations in control technology. Because technology-based limitations can require only what technology can achieve, it is claimed

that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset of excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 973 (4th Cir. 1976); *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations.

EPA has both upset and bypass provisions in NPDES permits, and has recently promulgated NPDES regulations which include upset and bypass permit provisions. (See 45 FR 33290, 33448; 40 CFR 122.60(g)(h), 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. Since permittees in the pesticide industry will be entitled to upset and bypass provisions in NPDES permits, these proposed regulations do not specifically repeat these provisions.

B. Variances and Modifications

Upon the promulgation of these regulations, the numerical effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to pesticide direct dischargers. In addition, the pretreatment standards are directly applicable to indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. (See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977)). This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it is included in the NPDES regulations and not the specific pesticide industry regulations. (See the NPDES regulations at 40 CFR Part 125 Subpart D; 44 FR 32854, 32893 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.)

Discharges subject to the BAT limitations proposed in these regulations also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants may be modified under Sections 301(c) and 301(g) of the Act. Under Section 301(1) of the Act, these statutory modifications are not applicable to "toxic" or conventional pollutants.

Discharges subject to pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs (See 40 CFR 403.7 and 403.13; 46 FR 9404 (Jan. 28, 1981). Discharges subject to pretreatment standards for new sources are subject only to the credit provision (See 40 CFR 403.7; 403.13; 46 FR 9404 (January 28, 1981). New sources subject to NSPS are not eligible for EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *DuPont* v. *Train, supra).*

C. Relationship to NPDES Permits

The expanded BPT and BAT limitations and NSPS in this regulation will be applied to individual pesticide plants through NPDES permits issued by EPA or approved State agencies under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except when variances and modifications are expressly authorized. This section adds more detail on the relation between this regulation and NPDES permits.

One subject of interest is the scope of NPDES permit proceedings when effluent limitations and standards do not exist. Under current EPA regulations, States and EPA regions that issue NPDES permits before regulations are promulgated must do so on a case-by-case basis. This regulation provides a technical and legal base for new permits.

Another issue is how the regulation effects the authority of those that issue NPDES permits. EPA has developed the limitations and standards in this regulation to cover the typical facility for this point source category. In specific cases, the NPDES permitting authority may have to establish permit limits on toxic pollutants that are not covered by this regulation. This regulation does not restrict the power of any permit-issuing authority to comply with law or any EPA regulation, guideline, or policy. For example, if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis, when such action conforms with the purposes of the Act. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permit-issuing authority *must* apply those limitations.

A final topic of concern is the operation of EPA's NPDES enforcement program, which was an important consideration in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, EPA can initiate enforcement proceedings at its discretion *(Sierra Club v. Train,* 557 F. 2d 485, (5th Cir., 1977). EPA has exercised and intends to exercise that descretion in a manner that recognizes and promotes good-faith compliance.

XVIII. Summary of Public Participation

In October 1980, the Agency circulated a report entitled "Briefing Package for Best Available Technology, Pretreatment Standards, New Source Performance Standards and Best Conventional Pollution Control Technology in the Pesticide Industry", which summarized the draft contractor technical report. The contractor's draft report contained recommendations for effluent limitations guidelines, new source performance standards, and pretreatment standards. The briefing package presented a summary of the technial information on which the Agency intended to base the proposed regulations. The Agency officially accepted written comments on the briefing package until November 28, 1980. Additional written comments were received after that date. A summary of all of the major comments received to date is presented in Appendix H to this regulation.

XIX Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be pointed to with specificity and requires that suggested revisions or corrections be supported by relevant data.

EPA is particularly interested in receiving additional comments and information in connection with the following:

(1) In order to provide a more extensive data base for this rulemaking, EPA requests that representatives of pesticide plants voluntarily sample and analyze for the priority, conventional, and nonconventional pollutants proposed for regulation. Samples should be taken, at a minimum, from intake

water, raw wastewater, and pretreated or final effluent where treatment is in place. Voluntary sampling and analyses must be conducted by the same methods used by EPA, or equivalent methods with acceptable Quality Control/Quality Assurance (QC/QA), precision and accuracy, etc. Therefore, individuals who intend to participate in this effort should contact George M. Jett (see **FOR FURTHER INFORMATION** at beginning of preamble) for further assistance. Sampling and analysis procedures and a list of laboratories capable of performing the analyses will be made available to those wishing to participate in this program.

(2) EPA requests that plant representatives review all data submitted to the Agency, including data on flow and production, to insure their accuracy.

(3) Characterization of potentially hazardous wastes at pesticide plants and the costs of hazardous waste disposal are important to these regulations and regulations being developed by EPA's Office of Solid Waste, under authority of the Resource Conservation and Recovery Act (RCRA). The Agency solicits additional data concerning the quantities, pollutant content, and handling and disposal costs for all solid wastes.

(4) The Agency is seeking additional information on ammonia discharges from integrated plants where ammonia-based chemicals are used. Information is sought on raw waste and final effluent levels of ammonia, available end-of-pipe technologies and their capability to remove ammonia, the feasibility of change to a different chemical base, and the costs associated with the application of end-of-pipe or production process control technologies.

(5) The Agency is seeking additional information on discharges from the manufacture of dithicarbamate pesticides in which manganese is expected to be present. Information is sought on raw waste and final effluent levels of manganese, available end-of-pipe technologies and their capability to remove manganese, and the costs associated with the application of end-of-pipe or production process control technologies.

(6) The Agency is seeking additional information on the ability of manufacturers of mercury, copper, cadmium, or arsenic-based pesticides and formulators and packagers that presently discharge to a POTW to achieve zero discharge of all process wastewater pollutants. Plants should submit information concerning present wastewater generation (flow and concentration of priority and nonconventional pesticides), type of treatment(s) employed, costs of installing and operating treatment(s), and method of wastewater disposal, along with data on the type and volume of product formulated and/or packaged.

(7) The Agency is soliciting comments on the 22 priority pollutants listed in Appendix F for which EPA is not proposing limitations at this time because adequate monitoring and/or control data are not available. These pollutants have been detected or as a result of process chemistry review are likely to be present in pesticide wastewaters. However, limited information exists on their concentration in the industry. Therefore, EPA cannot establish uniform national standards and limitations controlling the discharge of these compounds at this time. EPA specifically solicits comments from industry on whether these priority pollutants are present, at what levels, and what treatment technology could be utilized to achieve effluent limitations and standards.

(8) The Agency is soliciting comments on the transfer of technology information from a separate industry to the pesticide industry. In particular, electroplating and organic chemicals treatment technology information was transferred to the pesticide data base. EPA specifically solicits comments from the industry on applicability of transfer technology from the electroplating and organic chemicals industries. The Agency has sent a copy of this regulation to the Office of Management and Budget (OMB) for review. Any comments from OMB are included in the public record.

(9) To determine the economic impact of these regulations, the Agency has calculated the cost for installing BPT, BAT, PSES, NSPS and PSNS for the Pesticide Chemicals manufacturing facilities for which data was available. The cost aspects for the Pesticide Chemicals Category are presented in Section VIII of the technical Development Document and in the Economic Impact Analysis. The detailed costs by subcategory for BAT are in Section XII, for NSPS in Section XIII, and for PSES and PSNS In Section XIV. Based on these analyses, the Agency projects 3 plants closures and/or 50 employment losses as a result of these regulations. The Agency invites comments on these analysis and projections. We particularly seek comments from small or less profitable plants on the effects of the regulation on: plant closures, employment losses, production costs, the ability to finance non-environmental investment, product prices, profitability, international competitiveness, and the availability of less costly technology.

List of Subjects in 40 CFR Part 455

Pesticides and Pest.
Chemicals.
Waste treatment and disposal.
Water Pollution Control.

Dated: November 5, 1982.

Anne M. Gorsuch,
Administrator.

XX. APPENDICES

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 301(b)(2)(A) of the Act
BCT—The best conventional pollutant control technology, under Section 301(b)(2)(E) of the Act
BMP—Best management practices, under Section 304(e) of the Act
BPJ—Best Professional Judgment
BPT—The best practicable control technology currently available, under Section 301(b)(1)(A) of the Act
Clean Water Act—(CWA) 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 (Public Law 95–217)
Conventional Pollutants—For the pesticide industry conventional pollutants are defined as BOD, TSS and pH.
Design Effluent Levels—Long-term average final effluent levels demonstrated or judged achievable from maximum raw waste load levels through application of the recommended treatment technologies.
Direct Discharge—A facility which discharges or may discharge pollutants into waters of the United States excluding oceans.
Effluent Limitations—Any restrictions established by a state or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.
End-of-Pipe Treatment—Any treatment system operated to remove pollutants from wastewater prior to discharge (indirect or direct).

Formulating/Packaging of Pesticides—The physical mixing of technical grade pesticide ingredients into liquids, dusts and powders, or granules, and their subsequent packaging in a marketable container.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

Long-Term Average—The average (mg/1 or lbs/1,000 lbs) effluent for a pollutant at a particular point in the wastewater treatment system, based on available data. Treatment varability factors may be multiplied by the long-term average to derive 30-day maximum and daily maximum effluent limitations.

Mass-Based Limitations (kg/kkg)—Effluent limitations stated in terms of the mass of a particular pollutant (in kilograms) per 1,000 kilograms of pesticide production.

Nonconventional Pollutants—For the pesticide industry nonconventional pollutants are defined as nonpriority pollutant pesticides, COD, ammonia, and manganese.

Nonconventional Pesticide Pollutants—All pesticides active ingredients which are included under the scope of effluent limitations and standards for BAT, NSPS, and Pretreatment Standards but were not defined as "toxic" under the Clean Water Act.

Non-Toxic Pollutants—All conventional or nonconventional pollutants which are currently regulated or proposed to be regulated.

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.

Pesticide—Any technical grade ingredient used for controlling, preventing, destroying, repelling, or mitigating any pest.

Pesticide Active Ingredient—The ingredient of a pesticide which is intended to prevent, destroy, repel, or mitigate any pest. The active ingredients may make up only a small percentage of the final product which also consists of binders, fillers, diluents, etc.

Pesticide Industry—The combined facilities which manufacture as well as formulate and/or package pesticides.

Point Source—Any discernable, confirmed and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the Act.

POTWs—Publicly owned treatment works.

Pretreatment Standards—Any restrictions established by the states or the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged to POTWs.

Priority Pollutants—See Toxic Pollutants.

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307(c) of the Act.

RCRA—Resource Conservation and Recovery Act (PL 94–580) of 1976, Amendments to Solid Waste Disposal Act.

308 Survey—A questionnaire drafted by EPA, approved by the National Agricultural Chemicals Association and the Office of Management and Budget (OMB #158–R0160), and subsequently distributed to pesticide manufacturers in July 1978. The primary purpose of the survey was to obtain basic data concerning manufacturing, disposal, and treatment, as well as potential sources of toxic, conventional, and nonconventional pollutants.

Screening Program—A sampling and analysis project conducted by EPA Regional Sampling and Analysis Teams and private contractors during 1977 and 1978. The purpose of the program was to determine the source and level of conventional, nonconventional and toxic pollutants in the pesticides industry and to assist in the selection of plants for participation in the verification program.

Technical Development Document—The support document, entitled Development Document for the Pesticide Chemicals Manufacturing Category, which provides a technical data base for the proposal of effluent limitations for expanded BPT, BAT, NSPS, and Pretreatment Standards for the pesticide industry.

Toxic Pollutants—Those 65 pollutants and classes of pollutants specified as an outgrowth of the 1976 Settlement Agreement and declared by Congress to be "toxic" under Section 307(a) of the Clean Water Act of 1977.

Variability Factor—A determinant derived from statistical analyses of long-term effluent data that allows for the establishment of daily and monthly maximum levels for pollutant dischargers. The daily maximum variability factor is defined as an estimate (Uk) of the 99th percentile of the daily pollutant discharge divided by the average daily pollutant discharge. The monthly average variability factor is defined as an estimate (Uk) of the 99th percentile of the average monthly pollutant discharge divided by the average monthly pollutant discharge.

Verification Program—A sampling and analysis project conducted by private contractors to the Agency at selected plants in the industry. The purpose of the program was to verify the presence of the toxic, conventional, and nonconventional pollutants identified during the screening program and to determine the levels of these pollutants present in process wastewaters prior to and after application of the various control and treatment technologies employed in the industry.

Appendix B

Priority Pollutants to be Regulated by Pollutant Group

Volatile Aromatics
- Benzene
- Chlorbenzene
- Toluene
- 1,2-Dichlorobenzene*
- 1,4-Dichlorobenzene*
- Trichlorobenzene*

Halomethanes
- Methyl bromide
- Carbon tetrachloride
- Chloroform
- Methyl chloride
- Methylene chloride

Cyanide
- Cyanide

Haloethers
- Bis (2-chloroethyl) ether+

Phenols
- 2,4-Dichlorophenol
- 2,4-Dinitrophenol
- 4-Nitrophenol
- Pentachlorophenol
- Phenol

Metals
- Copper
- Zinc

Chlorinated Ethanes
- 1,2-Dichloreoethane
- Tetrachloroethylene

Nitrosamines
- N-nitrosodi-n-propylamine

Dichloropropane and Dichloropropene

1,3-Dichloropropene+
Dienes
Hexachlorocyclopentadiene
Pesticides
a-BHC-Alpha
b-BHC-Beta
d-BHC-Delta
g-BHC-Gamma (lindane)
a-Endosulfan-Alpha
b-Endosulfan-Beta
Endrin
Heptachlor
Toxaphene

*Proposed for regulation only in those processes in which it is the manufactured product; proposed for exclusion from regulation in all other processes where it is expected to be controlled by the regulation of chlorobenzene where the pollutant can be controlled by the same technology which reduces chlorobenzene discharge.

+Proposed for regulation only in those processes in which it is the manufactured product; proposed to be excluded from regulation in all other process pending collection of adequate monitoring data.

Appendix C

*Nonconventional Pollutants To Be Regulated by BAT**

Alachlor
Alkylamine hydrochloride
Ametryne
Amobam
AOP
Atrazine
Barban
BBTAC
Benfluralin
Benomyl
Bentazon
Biphenyl
Bolstar
Bromacil
Busan 40
Busan 85
Butachlor
Carbam-s
Carbendazim
Carbofuran
Carbophenothion
Chlorobenzilate
Chloropicrin
Chlorpyrifos
Chlorpyrifos methyl
Coumaphos
Cyanazine
2,4-D isobutyl ester
2,4-D isooctyl ester
2,4-D salt
2,4-DB
2,4-DB isobutyl ester
2,4-DB isooctyl ester
DBCP
D-D
Deet
Demeton
Dichlofenthion
Dichlorophen salt
Dichlorvos
Dinoseb
Dioxathion
Dowicil 75
Ethalfluralin
Ethion
Ethoprop
Etridiazole
Fensulfothion
Fenthion
Ferbam
Fluometuron
Fluoroacetamide
Glyodin
Glyphosate
Hexazinone
HPTMS
Isopropalin
KN methyl
Mancozeb
Maneb
Mephosfolan
Merphos
Metasol J-26
Metham
Methomyl
Metribuzin
Mevinphos
Nabam
Naled
Niacide
Oxamyl
PCP salt
Phorate
Profluralin
Prometon
Prometryn
Propachlor
Propazine
Pyrethrin
Ronnel
Silvex isooctyl ester
Silvex salt
Simazine
Simetryne
Sodium monofluoroacetate
Stirofos
Terbacil
Terbufos
Terbuthylazine
Terbutryn
Triadimefon
Tributyltin benzoate
Tributyltin oxide
Trichloronate
Tricyclazole
Vancide 51Z
Vancide 51Z dispersion
Vandice TH
ZAC
Zineb
Ziram

*Nonconventional pollutants to be regulated by BAT are also proposed for regulation by NSPS, PSES and PSNS.

Appendix D

Nonconventional Pollutants To Be Regulated Only by NSPS, PSES and PSNS [1]

Aminocarb
Azinphos methyl
Captan
Carbaryl
Chlorpropham
2,4-D
DCNA
Demeton-o
Demeton-s
Diazinon
Dicamba
Dicofol
Disulfoton
Diuron
Fenuron
Fenuron-TCA
Linuron
Malathion
Methiocarb
Methoxychlor
Mexacarbate
Mirex
Monuron
Monuron-TCA
Neburon
Parathion ethyl
Parathion methyl
PCNB
Perthane
Propham
Propoxur
Siduron
Silvex
Swep
2,4,5-T
Trifluralin

[1] Pollutants proposed for regulation by NSPS, PSES and PSNS also include pollutants to be regulated by BAT. (See Appendix C.)

Appendix E

Priority Pollutants Not To Be Regulated by Pollutant Group

Volatile Aromatics
1,3-Dichlorobenzene (controlled by monitoring benzene or chlorobenzene)
Ethylbenzene (controlled by monitoring benzene or toluene)
Hexachlorobenzene (controlled by monitoring benzene or chlorobenzene)
Halomethanes
Chlorodibromomethane (indicated not to be present)
Dichlorobromomethane (indicated not to be present)
Tribromomethane (controlled by monitoring bromomethane)
Phenols
2-Chlorophenol (controlled by monitoring 2,4-dichlorophenol)
2,4-Dimethylphenol (controlled by monitoring phenol or 2,4-dichlorophenol)
4,6-Dinitro-o-cresol (indicated not to be present)
2-Nitrophenol (controlled by monitoring 4-nitrophenol or 2,4-dinitrophenol)
Parachlorometa cresol (controlled by monitoring phenol or 2,4-dichlorophenol.
2,4,6-Trichlorophenol (controlled by monitoring 2,4-dichlorophenol)
Nitrosubstituted Aromatics
2,4-Dinitrotoluene (indicated not to be present)
2.6-Dinitrotoluene (indicated not to be present)
Nitrobenzene (indicated not to be present)
Polynuclear Aromatic Hydrocarbons
Benzo(a)anthracene (indicated not to be present)
Benzo(a)pyrene (indicated not to be present)
3.4-Benzofluoranthene (indicated not to be present)
Benzo(phi)perylene (indicated not to be present)
Benzo(k)fluoranthene (indicated not to be present)
Chrysene (indicated not to be present)
Dibenzo(a,h)anthrancene (indicated not to be present)
Indeno(1,2,3-cd)pyrene (indicated not to be present)
Pyrene (indicated not to be present)
Metals
Antimony (indicated not to be present over level of interest)
Beryllium (indicated not to be present over level of interest)
Cadmium (indicated not to be present over level of interest)
Chromium (indicated not to be present over level of interest)
Lead (indicated not to be present over level of interest)
Mercury (indicated not to be present over level of interest)
Nickel (indicated not to be present over level of interest)
Selenium (indicated not to be present over level of interest)
Silver (indicated not to be present over level of interest)
Thallium (indicated not to be present over level of interest)
Chlorinated Ethanes and Ethylenes
Chloroethane (controlled by monitoring 1,2-dichloroethane)

1,1-Dichloroethane (controlled by monitoring 1,2-dichloroethane)
1,1-Dichloroethylene (controlled by monitoring tetrachloroethylene)
Hexachloroethane (controlled by monitoring 1,2-dichloroethane)
1,1,2,2-Tetrachloroethane (controlled by monitoring 1,2-dichloroethane)
1,2-trans-Dichloroethylene (controlled by monitoring tetrachloroethylene)
1,1,1-Trichloroethane (controlled by monitoring 1,2-dichloroethane)
1,1,2-Trichloroethane (controlled by monitoring 1,2-dichloroethane)
Trichloroethylene (controlled by monitoring tetrachloroethylene)
Vinyl chloride (controlled by monitoring tetrachloroethylene)
Nitrosamines
N-nitrosodimethylamine (controlled by monitoring N-nitrosodi-n-propylamine)
N-nitrosodiphenylamine (indicated not to be present)
Phthalate Esters
Bis(2-ethylhexyl) phthalate (indicated not to be present)
Di-n-octyl phthalate (indicated not to be present)
Pesticides
Aldrin (previously regulated and banned)
Dieldrin (previously regulated and banned)
4,4'-DDD (previously regulated and banned)
4,4'-DDE (previously regulated and banned)
4,4'-DDT (previously regulated and banned)
Endosulfan sulfate (indicated not to be present)
Endrin aldehyde (controlled by monitoring endrin, not suspected above level of interest)
Heptachlor epoxide (controlled by monitoring heptachlor)
Dienes
Hexachlorobutadiene (controlled by monitoring hexachlorocyclopentadiene)
Miscellaneous
Acrolein (indicated not to be present)
Asbestos (indicated not to be present)
1,2-Diphenylhydrazine (indicated not to be present)
Isophorone (indicated not to be present)
Polychlorinated Biphenyls
PCB–1242 (indicated not to be present)
PCB–1254 (indicated not to be present)
PCB–1221 (indicated not to be present)
PCB–1232 (indicated not to be present)
PCB–1248 (indicated not to be present)
PCB–1260 (indicated not to be present)
PCB–1016 (indicated not to be present)
Benzidines
Benzidine (indicated not to be present)
3,3'-Dichlorobenzidine (indicated not to be present)

Appendix F

Priority Pollutants Not To Be Regulated by Pollutant Group Pending Further Data Collection

Haloethers
Bis(2-chloroethoxy) methane
Bis(2-chloroisopropyl) ether
4-Bromophenyl phenyl ether
2-Chloroethyl vinyl ether
4-Chlorophenyl phenol ether
Polynuclar Aromatic Hydrocarbons
Acenaphthylene
Acenaphthene
Anthracene
2-Chloronaphthalene
Fluoranthene
Fluorene
Naphthalene
Phenanthrene
Metals
Arsenic
Phthalate Esters
Butyl benzyl phthalate
Diethyl phthalate
Dimethyl phthalate
Di-n-butyl phthalate
Pesticides
Chlordane
Dichloropropane and Dichloropropene
1,2-Dichloropropane
TCDD
TCDD
Miscellaneous
Acrylonitrile

Appendix G

Nonconventional Pesticide Pollutants Not To Be Regulated Pending Further Data Collection

Acephate
Aldicarb
Allethrin
Anilazine
Aquatreat DNM 30
Aspon
Bendiocarb
Bensulide
Benzethonium chloride
Benzyl benzoate
Benzyl bromoacetate
Bifenox
Bromoxynil
Bromoxynil octanoate
Busan 90
Butylate
Captafol
CDN
Chloramben
Chlorophacinone
Chlorothalonil
Coumachlor
Coumafuryl
Coumatetralyl
Cycloate
Cycloheximide
Cycloprate
Cyhexatin
Cythioate
Dalapon
Dazomet
DCPA
Dichlorophen
Dichlorprop
Dienochlor
Dimethoxane
Dinocap
Diphacinone
Diphenamid
Diphenylamine
Dodine
Endothall
EPN
EPTC
Ethoxyquin 66%
Ethoxyquin 86%
Ethylene dibromide
EXD
Famphur
Fenarimol
Fenitrothion
Fentin hydroxide
Fluchloralin
Fluoridone
Folpet
Fonofos
Giv-gard
HAE
HAMP
Hexachlorophene
Hyamine 2389
Hyamine 3500
Kathon 886
Kinoprene
Lethane 384
Maleic hydrazide
MCPA
MCPA isooctyl ester
MCPP
Metasol DGH
Methamidophos
Methoprene
Methylbenzethonium chloride
Methylene bisthiocyanate
MGK 264
MGK 326
Molinate
Monocrotophos
Nabonate
1,8-Naphthalic anhydride
Napropamide
Naptalam
Nitrofen
NMI
Norflurazon
Octhilinone
Oryzalin
Oxydemeton
Oxyfluorfen
Paraquat
PBED
Pebulate
Permethrin
Phenylphenol

Phenylphenol sodium salt
Phosfolan
Phosmet
Picloram
Pindone
Piperalin
Piperonyl butoxide
Polyphase antimildew
Pronamide
Propanil
Propargite
Propionic acid
8-Quinolinol citrate
8-Quinolinol sulfate
Quinomethionate
Resmethrin
RH 787
Rotenone
Sulfallate
Sulfoxide
TCMTB
Tebuthiuron
Temephos
Thiabendazole
Thiofanox
Thionazin
Tokuthion
Tributyltin fluoride
Vancide PA
Vernolate
Warfarin

Appendix H

Public Comment Summary

A. The following comments pertain to the scope of the industry, specifically the types of products which are and are not covered in these regulations, the status of pesticide intermediates, the definition of wastewaters covered, and the formulator/packagers processes. For additional information on this subject please refer to Section III of the Technical Development Document.

1. *Comment:* What constitutes an "intermediate"? A plant may make an intermediate for use as a raw material in its pesticide processes and also as a salable product.

Response: The definition of pesticide intermediates is "materials resulting from each reaction step in the creation of pesticide active ingredients, except for the final synthesis step." Under the Agency's definition of intermediate, a plant may use an intermediate as either a raw material in its pesticide processes and also as a salable product.

2. *Comment:* Will limitations be developed in the future for the manufacturers of intermediates? When? Why have such regulations been deferred?

Response: The Agency intends to develop a schedule for regulation of pesticide intermediates. If the wastes from an intermediate are commingled with the active ingredient wastes instead of segregated from them, the Agency regulates the pesticide intermediate. Depending on the type of intermediate process, certain pesticide intermediates may be currently regulated in other chemical categories such as the organic and inorganic industrial categories. The Agency does not at this time have an adequate data base to propose national effluent limitations guidelines and standards for all intermediates in the pesticide industry.

3. *Comment:* Why are Hyamine products being regulated when disinfectants, quaternary ammonium salts, and products of minor commercial value are specifically excluded from BAT regulations?

Response: The inclusion of Hyamine products or other quarternary ammonium salts in these regulations is due to either significant production volumes or significant levels or priority pollutants such as volatile aromatics likely to be present in the wastewater from these processes.

4. *Comment:* An additional subcategory should be created to include those pesticides processes which employ non-surface discharge of process waste and surface discharge for non-process waste.

Response: The Clean Water Act does not require that regulations be issued for non-surface discharge of process wastewater, therefore, these proposed regulations apply only to the surface discharge of process wastewater. Surface discharge of segregated non-process wastewater has historically been dealt with by the permit writing authority on a case-by-case basis because it is a site specific pollution problem subject to local permit authority conditions rather than one of national significance. However, the Agency is willing to assist any permitter in establishing surface discharge limits for non-process wastewater.

5. *Comment:* Stormwater should be excluded from coverage under the pesticide regulations.

Response: Stormwater is excluded from these proposed regulations unless it is in contact with the immediate manufacturing or formulations area.

6. *Comment:* The control of stormwater runoff, non-contact cooling water, and sanitary wastes should be evaluated during the permit process on a plant-by-plant basis.

Response: Stormwater runoff (other than that which is in contact with the immediate manufacturing or formulating area), noncontact cooling water, and sanitary wastes are not addressed in these proposed regulations. Historically, control of these streams has been addressed during the permit negotiations.

7. *Comment:* BAT limitations should take into account the fact that the influent may contain traces of pollutants to be regulated; therefore, some allowances should be made. Allowances should be made for the noncontact cooling water and steam condensate when they are commingled with process wastewaters.

Response: The Agency has built into the NPDES permit program provisions for considering pollutants in the influent water to manufacturing facilities. These provisions, i.e., the Net/Gross limitations procedures are found in 40 CFR Part 122. The proposed pesticide chemicals regulations will not specifically address these or other permit policy issues. To date, there is no evidence that pollutants proposed for regulation are present in significant concentrations in raw water/influent streams; therefore, if commenters possess data which indicate otherwise, please submit these data to the Agency. Noncontact cooling water and noncontact steam condensate are outside the scope of these proposed regulations and should be dealt with by the permit writer on a case-by-case basis.

8. *Comment:* Process wastewater from formulation operations should be regulated separately from pesticide manufacturing operations.

Response: Formulator/packager and manufacturing processes were evaluated and found to comprise a separate subcategory. Direct discharges from existing formulator/packagers were previously regulated under BPT; direct discharges from new sources are now proposed for regulation under NSPS. Indirect discharges from existing and new source formulator/packagers are now proposed for regulation under PSES and PSNS, respectively.

B. The following comments pertain to the acquisition, validity, and evaluation of the pesticide industry data base. Questions concerning the statistical methodology and variability analysis of these data were also posed.

1. *Comment:* Most of the original 308 data are 5 years old. The validity of this data base must be reassessed.

Response: The Agency has verified the validity of the original 308 data and has utilized these verified (updated) data to develop the proposed regulations. The Agency is continually soliciting more data in an effort to update its data base.

2. *Comment:* Yearly pesticide production rates were converted to daily rates by EPA. The use of an assumed

constant daily production rate is an inaccurate interpretation of data.

Response: EPA converted yearly production rates to daily rates only in those cases where plants did not supply monthly or daily rates. The Agency believes that this conversion process is a reasonable representation of normal daily operations where more frequent data are not available.

3. *Comment:* All "less than" references in the data should be eliminated, and the actual values obtained should be used.

Response: "Less than" values were reported in data submitted to the Agency by the industry and the Agency has presented the data as reported. In addition, the Agency used "less than" detection limits to denote values reported as not detected. When not detected or less than values were averaged with detected (measurable) values, they were set equal to the detection limit. In these cases, the average was reported as a "less than" number.

4. *Comment:* The Development Document should provide the methodology that the contractor employed in the variability analysis.

Response: See Section XII of the Technical Development Document for a detailed discussion of the methodology used to determine treatment variability.

5. *Comment:* The contractor's recommended monthly variability factors appear to be much too low; as such, they are not consistent with the recommended long-term averages and daily limits for both pesticides and priority pollutants. The monthly values should be greater due to variances in analytical precision, raw waste load, and treatment efficiency. Our suggested variability factors are as follows:

TABLE 1.—SUGGESTED VARIABILITY FACTORS

Subcategory	Pesticides variability factor (1)		Aromatic priority poll variability factor (1)		Halogenated priority variability factor (1)	
	EPA	Commenter proposed	EPA	Commenter proposed	EPA	Commenter proposed
1	2.3	5.6	3.0	9.8	1.9	4.4(2)
2	1.8	3.8	2.9	9.7	4.5	9.8

(1) Monthly variability factor = Monthly Limit divided by Long-Term Average Performance.
(2) Phenols.

Response: The variability factors which were used to calculate the limitations and standards proposed in this notice were derived from statistical analyses of all available data. In the Agency's opinion, these data reflect the fluctuations in effluent quality expected from the operation of the best available treatment technology NSPS, PSES and PSNS. The Agency is actively soliciting additional long-term data in an effort to ensure that the variability factors employed in these regulations are representative of well-operated BAT treatment systems. Contingent upon receipt of additional data, the Agency intends to reevaluate all variability factors prior to promulgation of the final regulations. The commenter did not provide data or analysis to support his suggested variability factors. Accordingly, the Agency cannot make a judgment as to the vaildity and applicability of these numbers.

6. *Comment:* COD is listed as a conventional pollutant subject to BAT regulations for Subcategories 1, 2, and 10 when it is actually a nonconventional pollutant subject to BPT regulations.

Response: This has been corrected. COD limitations are being proposed under the expanded BPT and NSPS regulations.

7. *Comment:* Assumed effluent values, as in the example for 2,4-dichlorophenol presented in the briefing package, should not be employed in this study.

Response: All available influent and effluent data for priority pollutants as well as process chemistry evaluation results were reviewed prior to selecting the long-term average on which the proposed effluent limitations and standards are based. Consideration was given to the types of products manufactured, pollutant quantity and source, treatment system performance, and data validity. Using reliable engineering judgments, a reasonable long-term average was then selected for each priority pollutant proposed for regulation based on achieved effluents or, if data were not available, based on treatment of similarly structured pollutants in well-operated BAT treatment systems. Therefore, no "assumed effluent values" were selected that did not have a definable basis. This approach is explained in detail in Section XV of the Technical Development Document.

8. *Comment:* The derivation of the variability factors does not take into account possible seasonal, cyclical, and short-term effects.

Response: No data were excluded from the analysis because of their association with special factors although such factors were not taken into account explicitly in developing the limitations. The minimum sample size, sixty-nine, required for the nonparametric approach that was used is more likely to include data that reflect such factors than limitations determined on the basis of a parametric model such as the lognormal which requires fewer observations. Explicit consideration of the special factors mentioned would require data on the magnitude and occurrence of storms and short term and seasonal effects that were not available for analysis. The data used represent a wide range of normal operating conditions over different seasons. Sitespecific special factors are not addressed specifically in national regulations. These factors are considered individually in the NPDES permits process.

9. *Comment:* The data are "from a range of sources including operating plants, pilot operations, bench scale testing, and plant estimates This mix of data differs vastly in precision and accuracy and without careful statistical screening must fail the test of reasonableness (sic) as a data base."

Response: There is no inherent reason for exclusion of data obtained from multiple sources. The commenter did not specify what constitutes a test of reasonableness. The Agency attempts to use all suitable, relevant data available to determine effluent limitations. In practice, multiple sources of data are used to develop national regulations. Agency and industry supplied data were combined in the development of limitations. The industry data were supplied without precision and accuracy information which has been requested subsequently. However, lack of information on precision and accuracy is not by itself sufficient justification for exclusion.

10. *Comment:* A commenter recommended adoption of a lognormal approximating model as more appropriate since it would:

(a) require a move from traditional arithmetic statistics to less conventional geometric statistics, (b) permit evaluation of long-run properties of proposed standards on a common, mutually understandable basis.

Response: The lognormal model is frequently useful for the analysis of environmental data as noted. The lognormal was not used in this case because the data did not consistently pass statistical goodness of fit tests for the lognormal. The nonparametric

procedure used is general and not based on an assumption that the data follow a specified distributional form such as the lognormal.

11. *Comment:* The binomial equation for the confidence as given in the computation of the daily variability factor is incorrect.

Response: The binomial formula used is correct. In asserting that the formula is incorrect, the commenter has assumed that rank one was assigned to the smallest observation, rank two to the second smallest and so on. The formula is correct when rank is assigned to the *largest* observation, rank two to the next largest and so on.

12. *Comments:* One commenter asserted that the method of estimating the 99th percentile has two disadvantages: (1) "No estimate can be derived from data having less than 69 samples and (2) If the data contains less than 168 samples, the variability factor must be equal to the ratio of the maximum value divided by the long term average.

Response: The commenter is correct that a minimum of 69 observations is required for the application of the nonparametric procedure. The nonparametric procedure was used because of its desirable features. There is no need to specify a particular distribution to apply the procedure. It is quite general and applies in a wide range of circumstances. The probability of the 99th percentile being less than any particular observation can be computed objectively and thus the 99th percentile was estimated uniformly by the smallest ordered observation with at least 50 percent confidence. The requirement of a minimum of 69 observations is more likely to include a range of normal operating conditions such as production and seasonal variability and other "non-ideal behavior." The application of a parametric model, such as the lognormal, with smaller sets of data would very likely not be as effective in reflecting such diverse sources of variation. In two cases where less than 69 observations were available from a plant (60 observations for N-nitrosodi-n-proplyamine and 60 observations for phenol), the Agency used the largest observed value. The Agency is gathering additional data on these pollutants and will reevaluate its conclusions. The confidence level for the 99th percentile associated with the largest of 60 observations is 0.4528. This compares to the 0.5 minimum confidence level associated with 69 or more observations.

13. *Comment:* A commenter questioned the use of the 50 percent confidence level for the 99th percentile and suggested the use of a confidence level of at least 65 percent or even 90 percent.

Response: The Agency does not agree that a 75 percent or 90 percent confidence level estimate for the 99th percentile is appropriate. The 50 percent confidence (or tolerance) level estimate is interpreted as that value below which 99 percent of the values will fall in 50 percent of future samples of size n. That is, if a large number of samples of size n were available, 99 percent of the values would fall below the estimate in roughly 50 percent of the samples. Estimates obtained using this criterion are analogous to point estimates of the 99th percentile obtained using a parametric assumption such as the normal or lognormal when use of the parametric form is justifiable. The parametric point estimate has a distribution approximately centered about the estimate. In applying the nonparametric procedure, the Agency has required the confidence level to be *at least* 50 percent. Consequently, the actual confidence level for the nonparametric estimates can be greater than 50 percent. To achieve a minimum confidence of 75 or 90 percent for the nonparametric procedure, the minimum sample size n must be increased by approximately two (n=138) or four fold (n=230) respectively. The industry has not provided the quantity of data necessary to implement such a procedure. Furthermore, a minimum confidence level of 75 or 90 percent for the 99th percentile is not appropriate.

14. *Comment:* Two commenters questioned the application of the Central Limit Theorem when monthly averages are based on less than 30 observations.

Response: The number of observations required for compliance monitoring is an enforcement issue that is not addressed in the development of these regulations. Monthly limitations were computed based on the assumption that 30 daily observations are available. The 30 day limitations are based on 99th percentile estimates of the distribution of the arithmetic average of 30 observations. The Central Limit Theorem provides the justification for use of the normal distribution to approximate the distribution of the average of a sample of size n.

On page 134 in *Probability and Statistics for Engineers,* Irwin Miller and John E. Freund state as a guide for the application of the Central Limit Theorem that "In practice, the normal distribution provides an excellent approximation to the sampling distribution of X for n as small as 25 or 30, with hardly any restrictions on the shape of the population." Hence, for the development of 30-day limitations the application of the Central Limit Theorem was considered to be reasonable.

15. *Comment:* Regarding the computation of the 99th percentile which is used to compute the 30-day variability factor, one commenter raises "one specific point of contention. If a normal tolerance limit must be used the multiplier in the formula is not 2.33. This number is correct only when the standard deviation is known. The correct values, dependent on sample size, are given in *Experimental Statistics.*"

Response: The reference, Mary Gibbons Natrella (1963) *Experimental Statistics,* National Bureau of Standards Handbook 91, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. does not tabulate a multiplier, k, for the sample estimate, s, of the standard deviation, which gives 50 percent confidence that the 99th percentile is below $X + k s$ where X is the sample average and s is the sample estimate of the unknown standard deviation. However, on page 2–15 Natrella provides the following formulas for the computation of the factor, k, that may be used with estimates of the unknown standard deviation:

$$a=1-Z\gamma^2/(2(n-1))$$

$$b=Zp^2-Z\gamma^2/n$$

$$k=(Zp+(Zp^2-ab)^{1/2})/a,$$

Where 100γ is the percent confidence for the 100p percentile and $Z\gamma$ and Zp are found in Table A–2 of the same reference. That is $Z_{0.50}=0$ and $Z_{0.99}=2.33$.

When this procedure is used to compute k for the 50 percent tolerance limit for the 99th percentile of a normal distribution, k=2.33. This demonstrates that this 50 percent tolerance limit for the 99th percentile is equivalent to the point estimate of the 99th percentile for the normal distribution.

16. *Comment:* One commenter states that, "The use of fixed distribution percentiles for formulating standards without regard to proposed or stipulated sampling frequency has the potential of generating inequitable regulations and may even constitute an obstacle to careful compliance monitoring in some cases."

Response: The sampling frequency for compliance monitoring is not addressed in the development of the regulation. The sampling frequency is specified in the NPDES permit. Estimates of the 99th percentile have been used extensively in

the development of effluent guidelines and defended successfully in the courts. (See for example, *BASF Wyandotte Corp. v. Costle*, 598 F. 2d 637 (First Circuit 1978), remanded 614 F. 2d 21 (First Circuit, 1980). For a properly designed and operated treatment plant roughly 99 percent of the daily values can be expected to fall below the effluent limitation. A limitation based on the 99th percentile provides a balance between the need to allow for the variability reasonably expected for a well operated plant and the requirement that the plant be operated properly. The intent is to establish a limitation which is consistent with the requirements of the Clean Water Act and which does not subject industry to unnecessary enforcement proceedings. Although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. The agency has exercised, and intends to exercise, that discretion in a manner that recognizes and promotes good faith compliance efforts and conserves enforcement resources for cases in which there is a real failure to make a good faith effort to comply. A limitation based on the 99th percentile provides a balance between the need to allow for the variability reasonably expected of a well operated plant and the requirement that the plant be operated properly. The intent is to establish a limitation which is consistent with the requirements of the Clean Water Act and which does not subject industry to unnecessary enforcement proceedings.

C. The following comments pertain to the priority pollutant regulating requirements for a specific pesticide compound and the methodology used in subcategorization. For additional information concerning the regulation of priority pollutants, please refer to Section II and Section XXI Appendix 9 of the Technical Development Document. For information concerning subcategorization, refer to Section VII of the Document.

1. *Comment:* Some priority pollutants listed in Table 22 of the briefing package as present in the process wastewater of certain pesticides are, in fact, not present at all. However, they may be present in the combined wastewater resulting from both pesticide and nonpesticide manufacturing processes. When data was gathered, did the contractor take this into account?

Response: Data submitted to the Agency by pesticide manufacturers and gathered by the Agency's contractors were generated from analyses on both combined and segregated wastewater streams. The Agency and its contractor have evaluated the data from the combined streams, identified those data which are representative of the pesticide processes, and used those data so identified to define individual pesticide subcategorization and regulatory requirements. The Agency attempted in every case possible to isolate the true wasteload from the available information. If the commenter has data which indicate the presence or absence of listed pollutants (see Section XX—Appendix 9 of the Technical Development Document) or other pollutants in their segregated process wastewater or data on new manufacturing processes, please provide them to the Agency so that an evaluation of wastewater characteristics can be made for their individual pesticide processes.

2. *Comment:* Carbon tetrachloride and chloroform (chloromethanes) are known to be in one of the primary raw materials used in the manufacture of Diuron and Linuron. Therefore, these two compounds should be included in Table 22 of the briefing package (Section XXI Appendix 9 of the Technical Development Document) as priority pollutants to be regulated for those two pesticides.

Response: The Agency is requesting that this commenter provide data on the presence of chloromethanes in wastewaters, as raw material constituents or impurities, from these pesticides. If the data is provided, the significance of their reported presence can be assessed and appropriate subcategorization and regulatory requirements can be determined.

3. *Comment:* Chlorobenzene is not present in PCP wastes or, if it is, is less than 0.02 ppm. Therefore, steam stripping is not a necessary treatment and PCP should not be in Subcategory 2.

Response: Agency data indicate that chlorobenzene is present in significant levels in PCP wastewaters. Accordingly, steam stripping is the recommended treatment technology. Any long-term data which demonstrates that chlorobenzene has been detected at less than 0.02 ppm in PCP wastewater effluents should be submitted to the Agency.

4. *Comment:* One commenter stated the only priority pollutant involved in the manufacture of both Dichlorophen and Giv-Gard (SNS) is toluene, which is used as a solvent. The only priority pollutant used in the manufacture of Hexachlorophene is ethylene dichloride. Table 22 of the briefing package (Section xx Appendix 9 of the Technical Development Document) should be amended as follows:

CORRECT LIST OF PRIORITY POLLUTANTS

Pesticide	Priority Pollutant Group	Priority Pollutant to be Regulated
Dichlorophene	Volatile Aromatics	Toluene.
Giv-Gard (SNS)	Volatile Aromatics	Toluene.
Hexachlorophene	Chlorinated Ethanes.	Ethylene dichloride.

Another commenter stated that of the seven priority pollutants identified in the briefing package for Acephate, only toluene and methylene chloride were present; therefore, regulating for the other five should be eliminated. A third commenter stated that tetrachloroethylene and 1,2-dichloroethane are not present in the process employed for manufacture of Fonofos and should be eliminated from regulatory requirements. A fourth commenter indicated that a number of priority pollutants listed in Table 22 of the briefing package (Section XXI Appendix 9 of the Technical Development Document), as associated with certain pesticides, are not associated with the manufacture of the respective pesticide and requirements for analyses for such priority pollutants should be addressed and eliminated. Specifically:

a. Anilazine—cyanide and chlorobenzene

b. Sulprofos (Bolstar)—2,4-dichlorophenol and the other listed halohydrocarbons

c. Coumaphos—none should be regulated

d. Demeton—eliminate halomethanes

e. Disulfoton—eliminate chlorinated hydrocarbons

f. Fenthion—none should be regulated

g. Methiocarb—remove phenol

h. Metribuzin—remove cyanide

i. Oxydemeton Methyl—remove all except methylene chloride

j. Propoxur—remove phenol

k. Prothiophos (tokuthion)—remove benzene

Response: The Agency has included toluene in the list of priority pollutants to be regulated for Dichlorophen. The other pollutants listed for Dichlorophen (phenol), Giv-Gard (n-nitrosodi-n-propylamine, benzene) and Hexachlorophene (pentachlorophenol) were identified based on a process chemistry evaluation of process diagrams and other pertinent literature and data provided by the industry and other sources. The Acephate process chemistry evaluation indicates that the seven pollutants are likely to occur in the wastewater. The same statement applies to the Fonofos wastewater. Listings of other pollutants in Table 22 of the briefing package for regulating in

individual pesticide wastewaters were based on actual data obtained or on process chemistry evaluations. The Agency requests that the commenters provide data to support the stated contentions.

5. *Comment:* Bis (2-chloroethyl) ether (a haloether priority pollutant) is not a compound generated in the manufacture of Methomyl nor is it present in the process wastewater.

Response: Due to lack of adequate monitoring data, the Agency is proposing that all haloether priority pollutants not be regulated at this time in processes other than those in which they are the manufactured product. The Agency may propose regulations for the haloethers in the future and therefore is actively soliciting data concerning the occurrence and treatability of these pollutants in the pesticide industry.

6. *Comment:* The Agency has associated priority pollutants with manufactured pesticides where no such connection exists. For example, neither benzene, toluene, or chlorobenzene are associated with Trifluralin.

Response: The association of benzene, toluene, and chlorobenzene with trifluralin was an error which has been corrected by the Agency. N-nitrosodi-n-propylamine is the only priority pollutant proposed to be regulated in Trifluralin wastewater.

7. *Comment:* The pesticide Glyphosate should have been placed in Subcategory 10 instead of 2 based on prior regulatory status. None of the priority pollutants listed for Glyphosate in Table 22 of the briefing package are present in the process wastewater.

Response: The Agency is currently reviewing additional data which was recently received on this comment. However, based on data supplied at an earlier date, which indicated that volatile priority pollutants are present in the wastewater, glyphosate was placed in subcategory 2.

8. *Comment:* In Table 22 of the briefing package, priority pollutants are listed as compounds to be regulated which are not present in the respective process wastewater. These are listed by pesticide product as follows:

Product	Priority pollutants in briefing package
Goal (Oxyfluorfen)	1,2-Dichloroethane.
Kerb (Pronamide)	Benzene.
Stam (Propanil)	1,2-Dichloropropane.
	Naphthalene.
	Benzene.
	Toluene.
Tok (Nitrofen)	Pentachlorophenol.
	Phenol.
	Naphthalene.
	Benzene.
	Chlorobenzene.
	Toluene.
Hyamine 1622 (Benzethonium chloride).	Benzene.
10X (Methylbenzethonium chloride).	Benzene.
2389	Benzene.
3500	Toluene.
Kathon 886	Benzene.
Lethane 384	Naphthalene.
	Benzene.
	Toluene.

Response: The Agency is proposing that 1,2-dichloropropane and naphthalene not be regulated at this time pending the collection of additional data. The Agency may propose regulations for these compounds in the future and therefore is actively soliciting data concerning the occurrence and treatability of these pollutants in pesticide industry wastewaters. Please refer to response to comment D–4 for the other pollutants in question. If additional data are supplied, the Agency will reevaluate the pollutants proposed to be regulated.

9. *Comment:* The use of N-nitroso-di-n-propylamine as an indicator pollutant is incorrect. The nitrosamine produced in the reaction will vary with the amine used in the manufacturing process as follows:

Trifluralin: N-nitroso-di-n-propylamine.
Benfluralin: N-nitroso-ehthyl-n-butylamine.
Ethalfluraline: N-nitroso-ethyl-n-methlallylamine.
Isopropalin: N-nitroso-di-n-propylamine.
Oryzalin: N-nitroso-di-n-propylamine.

Response: The Agency is proposing nitrosamine priority pollutants attributed to the manufacture of Benfluralin and Ethalfluralin. In response to this comment, the Agency is reevaluating the applicable data. However, the Agency has determined that two priority pollutant nitrosamines, N-nitrosodi-methylamine and N-nitrosodi-n-propylamine, have been detected or are likely to be present in Trifluralin, Isopropalin, and Oryzalin process wastewaters. Installation and proper operation of the technology recommended to control the discharge of N-nitrosodi-n-propylamine will effectively control the discharge of both pollutants.

10. *Comment:* Priority pollutant regulation is not recommended for the pesticide Captafol. Our data show concentrations of toluene present in the process influent and effluent in sufficient amounts to require regulation. Consequently, the recommended treatment of pesticide removal followed by biological oxidation is insufficient to meet the Subcategory 1 limitations. However, the regulation of Captafol to a zero discharge status is also inappropriate.

Response: The Agency recognizes that two disposal methods are used for Captafol process wastewater. One stream, which shows the presence of toluene after bioaeration, is reported by the manufacturer to be totally evaporated and is therefore not subject to these regulations because these regulations apply only to direct or indirect discharge of pesticide process wastewater. In the future, should this commenter begin directly or indirectly discharging that wastewater stream which is previously being evaporated the Subcategory 1 limitations would become applicable. At that time, the Agency would recommend that the permit writer require that toluene be regulated. The other stream is incinerated with incinerator blowdown being directly discharged and is therefore subject to the subcategory 1 limitations. Captafol is placed in Subcategory 1 because the toluene is destroyed by incineration and no additional treatment is required. The data available to the Agency demonstrate that Captafol can comply with the Subcategory 1 limitations.

11. *Comment:* Atrazine is regulated under either Subcategory 1 or Subcategory 10, depending on the nature of the manufacturing process employed. We began manufacturing Atrazine after the BAT verification sampling period; under which subcategory is our process regulated? The priority pollutants listed in Table 22 of the briefing package for Subcategory 10 do not appear to be applicable to our process.

Response: Different manufacturing processes generate different priority pollutants and each process will be reviewed on an individual basis and regulated for only those priority pollutants which are germane to it. The Agency has advised this commenter of the subcategory in which their Atrazine process has been placed.

12. *Comment:* For Subcategory 9, the indicator pollutants to be regulated should be limited to 1 or 2 phenol compounds and 1 or 2 chloroalkanes/alkenes (instead of the recommended 5 and 8, respectively). For Subcategory 2, only 1 or 2 chloroalkane/alkene indicator pollutants should be regulated.

Response: The priority pollutants proposed for regulation for each subcategory do not pertain to each pesticide in that subcategory. Section XXI-Appendix 9 of the Technical Development Document lists the priority pollutants proposed to be regulated for each individual pesticide. The Agency believes that those listed priority

pollutants are the minimum required to control the effluent discharge.

13. *Comment:* None of the priority pollutants listed for Octhilinone (Skane) are associated with its manufacture. This pesticide degrades to a greater extent than the difference between the 30-day average limits for pretreatment and direct discharge listed for Subcategory 1. Kathon 886 is similiar chemically and environmentally to Octhilinone. Therefore, Octhilinone should be placed in Subcategory 2.

Response: Octhilinone process wastewater are not proposed to be regulated for any priority pollutants or the active ingredient therefore, the Subcategory 1 nonconventional pesticide and priority pollutant limits are not applicable. It is indicated from a process chemistry evaluation that Kathon 886 process wastewaters contain volatile aromatic priority pollutants and the Agency is therefore proposing that benzene and toluene be regulated. Accordingly, Kathon 886 was placed in Subcategory 2.

14. *Comment:* Subcategorization alternatives, in addition to the chosen scheme, should be described and evaluated in detail in the Development Document.

Response: Various subcategorization alternatives were considered in the development of the proposed subcategorization scheme. Section VII of the Technical Development Document discusses the subcategorization scheme which is being utilized in these proposed regulations. Discussions of alternate schemes are available for review in the Administrative Record.

15. *Comment:* It appears that priority pollutant waste loads and treatment technologies were the dominant consideration in the subcategorization scheme. Some adjustment, flexibility or further subcategorization, particularly with respect to Subcategory 2, will be required to recognize the capabilities of technology to achieve the recommended nonpriority pollutant pesticide limitations.

Response: Nonpriority (nonconventional) pesticide pollutant waste loads, and the treatment technologies which are recommended to reduce them, were also considered when the subcategorization scheme was developed. As a result, pesticide removal (such as hydrolysis, carbon adsorption, or resin adsorption) followed by biological oxidation are recommended treatments for all subcategories for which a discharge is allowed. Since these technologies for pesticide removal were demonstrated in the BPT regulation to be typical for the industry, they have been recommended in BAT for the 34 nonconventional pesticide pollutants proposed for regulation in Subcategory 2. Costs for each technology have been estimated. However, individual plants may elect to achieve effluent levels by any type of in-process or end-of-line treatment rather than the specific treatment technologies recommended for BAT.

16. *Comment:* A reduction in the number of subcategories could be accomplished without diluting the effectiveness of the proposed regulations. The following subcategories could be combined: 1, 3, and 4; 5 and 8; 6, 7, and 11.

Response: Based on information available in the Administrative Record and the rationale presented in Section VII of the Technical Development Document, this industry should not be divided into less than thirteen subcategories. The Agency is requesting that this commenter provide the data and other supplementary information necessary to support the recommended subcategory consolidation.

17. *Comment:* The subcategorization scheme has created unnecessary dichotomies in the recommended standards and limitations for certain "non-priority pollutant pesticides". Compounds which are closely related structurally have been arbitrarily separated into different subcategories having widely varying values for discharge limitations.

For purposes of treatment: a. 2, 4-D and all its esters and salts should be placed in Subcategory 9. There is no logical basis for requiring zero discharge for these products. b. PCP and its salts should be placed in Subcategory 2.

Response: Pesticides were not assigned to particular subcategories based on structural similarities, because the Agency has determined that pesticide structural similarity does not correlate to the type and quantity of priority pollutants found in process wastewater streams due to the diverse raw materials, solvents, catalysts, impurities, byproducts, and other materials found in pesticide manufacturing processes. As outlined in Section VII of the Technical Development Document, pesticides were assigned to particular subcategories based primarily on the combinations of priority pollutants which have been detected or are likely to be present in the wastewater generated from each pesticide process.

Specific responses are as follows: a. Based on information available in the Administrative Record, the pesticides 2, 4-D salt (all plants) and 2, 4-D isooctyl ester (Plant A only) are currently manufactured with zero discharge of process wastewater and were therefore placed in Subcategory 11.

The pesticides 2,4-D (all plants), 2,4-D isobutyl ester (all plants), and 2,4-D isooctyl ester (Plant B only) are placed in Subcategory 9 based on priority pollutant phenols and volatile pollutants which are detected or are likely to be present and the combination of technologies which is recommended to treat these pollutants (steam stripping and pesticide removal followed by biological oxidation).

b. According to the Agency's data, there are no priority pollutants present in significant concentrations in wastewater resulting from the manufacture of PCP salt while, in contrast, several priority pollutant phenols and chlorinated volatile aromatics have been detected in significant quantities in wastewater resulting from the manufacture of PCP. Consequently, only pesticide removal and biological oxidation are recommended for treatment of PCP salt wastewater, while steam stripping, pesticide removal and biological oxidation are recommended for treatment of PCP wastewater. The specific combination of pollutants present in each wastewater, and the treatments recommended from removal of those pollutants dictated that PCP salt be placed in Subcategory 1 and PCP in Subcategory 2.

18. *Comment:* Carbendazim is produced as both a salable pesticide product and an intermediate used in the production of benomyl; however, both pesticides are manufactured in separate processes which do not utilize common process equipment. Consequently, BAT effluent limitations should apply to each process individually, and the portion of the carbendazim production destined for use as an intermediate should not be subject to the regulation.

Response: The Agency recognizes that effluent limitations should apply to the Benomyl and Carbendazim processes individually, as demonstrated by the placement of the former in Subcategory 1 and the latter in Subcategory 2. Since Benomyl and Carbendazim cannot be analytically differentiated, the nonconventional pesticide pollutant limitations for each would be additive when simultaneous production is occurring. Pesticide intermediate production is normally outside the scope of these regulations. However, in this case there is no difference between the Carbendazim manufactured for sale and that manufactured as an intermediate in the Benomyl process. Accordingly, the Agency regulates carbendazim as an

active ingredient regardless of its end use.

19. *Comment:* Hexazinone should be placed in Subcategory 10 with the other triazines to be regulated. However, our data show that the application of the recommended treatments for either Subcategory 2 or 10 would not result in a removal efficiency high enough to meet the contractor's recommended guidelines.

Response: Unlike the triazines in Subcategory 10, cyanide has not been detected and is not likely to be present in significant concentrations in Hexazinone wastewaters. The absence of cyanide dictated that Hexazinone be separated from the other triazines and be placed in Subcategory 2. The Agency's data show that the proposed limitations and standards for hexazinone are economically achievable by use of the recommended treatment technologies. Any data to the contrary should be provided to the Agency.

20. *Comment:* Benzene is not present in wastestreams resulting from the manufacture of S-triazines.

Response: Four volatile aromatic priority pollutants, including benzene, have been detected or are likely to be present in wastewater resulting from the manufacture of S-triazine pesticides. If this commenter possesses data which indicate otherwise, please submit them to the Agency.

D. The following comments pertain to priority pollutant and nonconventional pesticide analytical methods. All nonconfidential analytical methods provided to the Agency including industry, contractor, and intra-agency methods are included as part of the Administrative Record.

1. *Comment:* The applicability of analytical procedures which are not under current review by the 304(h) review committee is questionable at best. In addition, the 304(h) analytical procedures proposed in the Federal Register on December 3, 1979 have not yet been promulgated.

Response: The analytical procedures provided by the industry for six select nonconventional pesticides proposed for regulation were reviewed for "tentative acceptability" for use in compliance monitoring based on an Agency-approved evaluation criteria. These procedures are those used by the industry in monitoring wastewater effluents and were used to generate data to support development of these regulations. The Agency plans to propose analytical methods which aren't under review by the 304(h) committee in the near future, and eventually promulgate them. These methods are curently in the record. In addition, the Agency intends to promulgate the 304(h) methods in the near future.

2. *Comment:* The use of a thermal energy analyzer should be made officially equivalent to the use of a nitrogen phosphorous detector in the assay for nitrosamine content.

Response: The use of the thermal energy analyzer as the detector of choice for nitrosamines will be permitted by the analytical procedure in the final 304(h) rulemaking package. For clarification in this matter, please contact Dr. James Longbottom, Environmental Monitoring and Support Laboratory, U.S. EPA EMSL, 26 West St. Clair Cincinnati, Ohio 45268. Dr. Longbottom can be reached via telephone at (513) 684–7311.

3. *Comment:* Are any of the pollutant concentrations listed in Table 7 of the briefing package below the level of significance (detection) for their respective analytical methods?

Response: A comparison of these design effluent levels (Table 7) to the individual detection limit has demonstrated that no pollutant concentrations fell below the analytical detection limits.

4. *Comment:* Trifluralin and its analogs, benfluralin and ethalfluralin, are indistinguishable by known analytical techniques; yet the 30-day maximum limitations for them are different.

Response: These compounds were placed in different subcategories because of differences in prior regulatory status and the combinations of priority pollutants detected or likely to be present in each pesticides wastewaters. If these compounds cannot be analytically differentiated, the permit writer will take into account the unique circumstances of the manufacturing operations to arrive at mass limitation for each active ingredient.

5. *Comment:* For very saline wastestreams, COD analysis is difficult. Historically, permit writers have recognized this and allowed the TOC parameter to act in lieu of COD. The Agency should continue to allow this flexibility on the part of the permit writer.

Response: The use of the TOC parameter in lieu of COD will continue to be addressed by the permit writer on a case-by-case basis.

6. *Comment:* While the proposed limitations for the priority pollutants are probably within the limits of detection of reasonably applicable analytical methods, we doubt seriously that quantification can be achieved at these levels with the degree of certainty necessary to write and comply with discharge permits. (20)

Response: The Agency has determined through measurements and calculations that all parameters proposed for regulation can be measured to the proposed values in the regulated waste streams by employing good analytical techniques with the existing methods. If a manufacturer feels that because of site specific problems he cannot achieve quantification with reasonable precision in plant monitoring or segregated waste streams will be recommended.

E. The following comments pertain to the estimated costs of the recommended treatment technologies and the economic effects of the proposed regulations. For additional information on costing and economics please refer to Sections VIII, X, XII, XIII, and XIV of the Technical Development Document and the Economic Analysis Report.

1. *Comment:* No mention of actual treatment costs is made in the briefing package. It is suspected that the economics of waste treatment are significantly understated based on previous cost estimates by EPA.

Response: Capital and annual treatment costs were not presented in the briefing package. These costs are, however, provided in Section VIII of the Technical Development Document, the Economic Analysis Report, and the Administrative Record on a subcategory and plant-by-plant basis. These treatment costs were based in part on actual treatment costs available from this and related industries. The Agency believes that the cost estimates are reasonable.

2. *Comment:* The costs for BAT should be calculated assuming that the BPT effluent limitations are currently achieved. The costs of leasing vs. purchasing activated carbon systems should be taken into account.

Response: The costs for achieving compliance with the proposed regulations were calculated assuming that the BPT effluent limitations, where applicable, are being achieved.

Leasing costs were not provided by the industry due to the confidential nature of this information. Therefore, the Agency used purchased system costs. At carbon usage rates of >2500 lbs/day, the purchase of a recommended activated carbon system can be expected to cost less than leasing that system. However, at carbon usage rates <2500 lbs/day, lease systems may be an attractive alternative. Since a majority of plants in this industry use more than 2500 lbs/day of activated carbon, purchased systems were costed for this proposal and the costs derived are judged to be representative.

Therefore, for plants using less than 2500 lbs/day, the purchase system costs (and the resulting economic impact) are expected to be greater than actually experienced with a lease system.

3. *Comment:* The costs for contract hauling and disposal of pesticide process wastes are far in excess of $60/yd^3 as reported in the briefing package. Current price estimates range from $225 to $400/yd^3.

Response: The Agency has noted that costs for contract hauling has risen at a faster rate than the ENR index. Therefore, appropriate treatment costs, including the cost of contract hauling, will be updated prior to promulgation.

4. *Comment:* Level 3 is impractical with respect to the economic impact.

Response: The Agency has rejected level 3 technology due to the high costs associated with its installation and operation and the minimal incremental pollutant reductions derived.

5. *Comment:* Assuming the usual permit monitoring requirements, highly sophisticated analyses would have to be conducted on a daily basis to determine compliance with the proposed effluent limitations and standards. The costs associated with such analyses, in terms of specialized equipment and highly trained personnel, are wholly unreasonable. No consideration was given to monitoring costs in the briefing package. The Agency should only promulgate effluent limitations which can be monitored within reason.

Response: Monitoring requirements are established by the permit writing authority on a case-by-case basis. Accordingly, they are not provided in these regulations but the Agency will provide guidance to permit writers with respect to monitoring frequency and associated costs on a case-by-case basis. The Agency has not directly considered monitoring costs when assessing the economic impact of these proposed regulations. The Agency has indirectly considered monitoring costs by limiting the number of regulated priority pollutants to a minimum by designating pollutants as primary, dual, or secondary significance (see Section IX of the Technical Development Document).

F. The following comments pertain to treatment/disposal technology and design recommendations and their specific application to priority, conventional and nonconventional pollutants. For additional information on this subject please refer to Sections VI and XV of the Technical Development Document.

1. *Comment:* A level of significance of 10 micrograms/liter has been chosen by the contractor for volatile aromatics and halomethane. Agency regulations to date indicate that, in fact, 100 ppb is an appropriate level of significance when considering treatment technology, monitoring capability, and analytical validity.

Response: The Agency has selected design effluent levels of 10 ug/l for the volatile aromatic and halomethane priority pollutant groups based on evaluations of effluent levels demonstrated or judged achievable for priority pollutants of primary significance in each pollutant group. These levels are within the analytical capabilities of the applicable methods. Although previous Agency regulations may have selected 100 ppb as an appropriate level of significance for these pollutant groups, the proposed regulations are based on the application of the best available treatment technologies which, in the pesticide industry, are generally more sophisticated than those common to other industries and thus capable of meeting a 10 ug liter design effluent level.

This contention is supported by the Agency's data which show that at least six pesticide manufacturers are achieving the selected design effluent levels for volatile aromatic and/or halomethane priority pollutants.

2. *Comment:* The design effluent levels in Table 7 of the briefing package should be substantiated with applicable data.

Response: The data which substantiate the design effluent levels are available for review in Sections V, VI and XV of the Technical Development Document and in the Administrative Record.

3. *Comment:* Was a discharge concentration of 10 ppb for volatile aromatics and halomethanes assumed for an exemplary "plant flow" when the design effluent levels were developed and presented in Table 7 of the briefing package? If so, this places an engineering standard into operation, rather than a performance standard.

Response: A design effluent level of 10 ug/1 was selected for the volatile aromatic and halomethane priority pollutant groups because this level has been demonstrated and is judged to be achievable from maximum raw waste load levels through proper application of the recommended treatment technologies.

4. *Comment:* The RCRA philosophy for extractable toxicants should be reviewed against the concentration levels presented in Table 7 of the briefing package.

Response: The Agency presumes that the commentor is referring to the RCRA practice of multiplying EP toxicity values times 100 to allow for the effects of leachate dispersion and diffusion in establishing effluent standards. The only comparative practice for the regulation of pollutants discharging directly or indirectly into surface waters would be to take receiving stream flow dilution rates into account. This approach was, in fact, taken as reported in the Environmental Assessment to these proposed regulations.

5. *Comment:* What constitutes "effective" treatment?

Response: Effective treatment is defined as wastewater treatment that meets or exceeds the proposed limitations and standards.

6. *Comment:* The contractor's recommended pretreatment standard for the presence of methylene chloride in Cyclohexamide process wastewaters requires an unattainable 99.9999 percent removal. An average pretreatment standard of 95 percent removal is recommended and is obtainable in a well-operated stripper.

Response: These regulations are not based on percent removals but attainable levels. The Agency feels that an effluent of 1 mg/l methylene chloride is attainable in a combined steam stripping system. The Agency's data support this contention and indicate that such removal is economically feasible given the potential for recycling the stripped solvent to the process and utilizing the stripper bottoms as residual boiler fuel. The limited information submitted thus far by the commenter indicates that a treated effluent containing approximately 1000 mg/l methylene chloride is presently being discharged from the Cyclohexamide process. The Agency feels that this discharge level is excessive in terms of recycle potential and toxicity to receiving waters. This commenter is requested to provide raw waste load and treated effluent data, along with treatment system design and operating criteria, to the Agency so that further evaluation of the Cyclohexamide process and treatment system may be conducted.

7. *Comment:* Preliminary information has indicated there will be significant difficulty in meeting the contractor's recommended limitations for perchloroethylene (tetrachloroethylene) methylene chloride, methyl chloride, carbon tetrachloride, and cyanide.

Response: The Agency's data indicate that the proposed limitations and standards for these volatiles and for cyanide are being achieved at this commenter's facility. The commenter is requested to submit priority pollutant effluent data subsequent to December

1979 for the two pesticide processes identified in its 308 responses to the Agency for evaluation.

8. *Comment:* Our experience with the recommended treatment for reduction of $MeCl_2$ shows that the recommended effluent limits for this compound are too low.

Response: The data available for public review in the Technical Development Document and Administrative Record support the Agency's contention that the proposed methylene chloride limitations and standards are economically achievable through the installation and proper operation of the recommended treatment technologies (steam stripping and biological oxidation). The Agency encourages this commenter to provide data and supplementary information to support his contention. The supplementary information provided should include design criteria to allow comparison with the Agency's recommended design.

9. *Comment:* Does treatment technology exist which will reduce aluminum and associated zinc discharges for Dithanes to 0.02 lbs/1000 lbs?

Response: Aluminum is not a pollutant proposed for regulation in these regulations. As presented in Section IV of the Technical Development Document, data from a previously manufactured metallo-organic pesticide and data transferred from the coil coating industry indicate that effluents containing less than 0.019 lbs/1000 lbs (0.5 mg/1) zinc are routinely achieved utilizing the recommended metals separation technology.

10. *Comment:* The POTW credit allotted for zinc removal should be 70–80 percent, not 50 percent.

Response: The Agency's data show zinc removal across a biological treatment system to be approximately 50 percent at influent concentrations of 1 mg/l or less (see Section VI of the Technical Development Document). The commenter is requested to provide data to support his contention.

11. *Comment:* No treatment technology is known which will achieve the recommended effluent limitations for Glyphosate with any reasonable confidence level.

Response: The Agency is evaluating data and information recently submitted and is considering this comment.

12. *Comment:* The Subcategory 2 pesticide limits are too stringent for Methomyl, even with the application of more extensive treatment techniques than that on which the guidelines are based. The limits for Bromacil are also too stringent; the recommended treatment is borderline with respect to compliance with the recommended guidelines.

Response: The Agency's data indicate that a 99.95 percent removal of Methomyl through chemical oxidation and an additional 99.1 percent removal through biological oxidation are achievable. The Agency's data also indicate that a 99.3 percent removal through chemical oxidation and an 82.5 percent removal through biological oxidation are achievable for Bromacil. However, the highest effluent achievable of 37 discrete direct discharge pesticide processes in Subcategory 2 was found to be 00.525 lb/1000 lbs (0.185 mg/1) following pesticide removal and biological treatment. Neither Methomyl or Bromacil represented the highest effluent achievable. Based on these data and supporting treatability studies, the Agency has concluded that the proposed limits are achievable by installation and proper operation of the recommended technologies without overly burdensome economic impact.

13. *Comment:* Biological oxidation is not applicable to the recommended pretreatment of wastes from the manufacture of 2,4-D for Subcategory 9.

Response: Biologicl oxidation is not recommended for pretreatment of pesticide manufacturing process wastewaters; however, it is recommended for final treatment of pesticide wastewaters prior to direct discharge to navigable waters. The proposed pretreatment standard for Subcategory 9 nonconventional pesticide pollutants was derived based on the pollutant reduction capabilities of the recommended pesticide removal technology (carbon or resin adsorption or hydrolysis) and the Agency's data show that this standard can be met by installation and proper operation of the recommended technology.

14. *Comment:* The recommended pretreatment standards for Subcategory 9 are not known to be achievable and, if achievable, only at high cost and with great operational vigilance.

Response: The technical data on which these recommendations were based indicate that the proposed PSES are achievable. Furthermore, the Agency's economic data indicate that the installation and operation of the technology recommended to achieve the proposed PSES will not be overly burdensome.

15. *Comment:* The concept of zero discharge, as applied to Subcategory 11 and formulators, is a practical impossibility and should be revised to allow the on-site treatment of wastewater with some permissable discharge.

Response. The Agency's data indicate that all pesticides in Subcategory 11 are currently being manufactured with zero discharge of process wastewater. Therefore, effluent limitations and standards for these pesticides are being proposed which equal the discharge levels currently being achieved. The Agency's data also indicate that approximately 90 percent of all formulator/packagers do not generate any process wastewater. The remaining 10 percent generate relatively small volumes of concentrated wastewater which is recommended for disposal by evaporation or contract hauling, thereby achieving zero wastewater discharge. The Agency's economic data indicate that treatment and monitoring of this wastewater prior to discharge is more costly than disposal by the recommended methods. These commenters are requested to submit data and supplementary information to support their contention.

16. *Comment:* The manufacture of tributyltin salts (Subcategory 11) should not be regulated to zero discharge. Organo-tin salts are only moderately toxic, and the wastewater resulting from their manufacture is not totally recycled, reused, or evaporated.

Response: The regulations proposed in this notice were derived based on the documented effluent reduction capabilities of the best available pollutant control technologies. Other factors, such as toxicity, were considered but were not the primary determinant. Limitations and standards for the manufacture of several pesticides, including the tributyltin salts, are being proposed as zero discharge of process wastewater because the wastewater generated during these processes, if any, was reported to be recycled, reused, or is of such limited volume that total evaporation or contract hauling is economically feasible. If process wastewater from the manufacture of tributylin salts is no longer recycled, reused or evaporated or greater than 5,000 gallons per day, please provide the Agency with such documentation.

17. *Comment:* The recommended effluent limitations for conventional pollutants indicate that the Agency continues to rely heavily on the limited BPT data base. This data base, in turn, relied heavily on the atypical performance levels at two of our plants. More conventional installations will not readily meet the recommended limits.

Response: Upon promulgation, the BPT regulation was challenged by

several industry members and was subsequently upheld by both the First Circuit Court of Appeals and the Supreme Court. The limitations for conventional pollutants promulgated as part of that regulation are fair and reasonable and, therefore, the Agency has utilized, in part, the BPT data base in the development of proposed expanded BPT and NSPS limitations for conventional pollutants. The Agency has also generated additional data on the treatability of conventional pollutants subsequent to BPT and these data support the Agency's contention that the proposed expanded BPT and NSPS limitations for BOD, TSS, and pH are economically achievable. However, the Agency is continuing to solicit additional data in this area.

18. *Comment:* Did the contractor consider available technology and economic impact when recommending COD levels for effluents resulting from s-triazine manufacturing processes? Data from our cyanizine manufacturing process indicates otherwise.

Response: The Agency is proposing BPT and NSPS effluent limitations controlling COD discharges from s-triazine manufacturing processes based on the contractor's recommendations. These recommendations were made upon consideration of available treatment technologies and the Agency's technical and economic data (which included data from this commenter's cyanazine manufacturing process). The data indicate that s-triazine manufacturers can achieve the proposed COD limitations by proper operation of a biological treatment system. If this commenter's data indicate otherwise, please submit the data to the Agency for evaluation.

19. *Comment:* Activated carbon should not be included as a second choice of removal technology; it seldom removes the compounds intended.

Response: Although activated carbon has repeatedly been shown to remove significant quantities of the priority and nonconventional pesticide pollutants commonly generated in this industry, the Agency has rejected its use as a tertiary form of treatment due to its high cost. However, based on available data which demonstrates effective removal, the Agency does recommend activated carbon as a primary form of treatment for removal of nonconventional pesticides and priority pollutant phenols, nitrosamines, dienes, and pesticides.

20. *Comment:* The Level 3 treatment employing tertiary granular activated carbon (Table 7 of the briefing package) shows an unjustifiably optimistic removal of a number of parameters, including pesticides.

Response: The data in the Administrative Record to these proposed regulations substantiate the Agency's contention that by use of tertiary granular activated carbon, the Level 3 design effluent levels presented in Table 7 can be achieved. Also see response to comment F–19.

21. *Comment:* The contractor's figures for treatment by biological oxidation assume an inordinately optimistic priority pollutant removal. A pollutant reduction of 90 percent by this method is not attainable for all pollutant groups. In addition, the efficiency of pollutant removal by biological treatment declines at lower discharge levels.

Response: The data in the Administrative Record show that, with the exception of cyanide and the metals, a 90 percent reduction of selected priority pollutants in each priority pollutant group of concern is attainable across a biological treatment system. The Agency is currently conducting treatability studies to investigate removal efficiencies at low pollutant concentrations and the results will be incorporated into the data base prior to promulgation of these regulations. The Agency encourages the submission of any data which document these commenters' contentions.

22. *Comment:* Biological oxidation should not be recommended as a method to reduce pesticides in process wastewater.

Response: The Agency's data show that in many cases, biological oxidation is effective in reducing concentrations of pesticides to levels equal to or less than the effluent limitations proposed in these regulations. This data is available for review in the Administrative Record and is summarized in Sections VI and XV of the Technical Development Document.

23. *Comment:* Why aren't evaporation ponds considered as a BAT treatment technology option?

Response: Both solar and spray evaporation systems are recommended BAT treatment technologies for the disposal of small volumes (5000 gpd or less) of process wastewater.

24. *Comment:* Consolidated permitting and RCRA should not allow such techniques as evaporation ponds.

Response: The Agency recognizes that the disposal of wastewater in evaporation ponds poses a potential for contamination of air and groundwater. To prevent groundwater pollution, the Agency recommends that an impermeable soil or membrane be installed to prevent leachate from entering groundwater. Although the potential for evaporation of volatiles and possible losses by drift have not been quantified at this time, at least one state has determined that methanol and less volatile arsenic emissions from a pesticide wastewater evaporation pond would be insignificant.

25. *Comment:* Thermal oxidation should be considered as a best available treatment technology.

Response: The Agency recommends thermal oxidation (incineration) as a BAT treatment technology for elimination of concentrated organic process wastes, condensed organics from steam stripping systems which cannot be reused, reactor vent streams, and other refractory streams. The incinerator design recommended in this study provides for the scrubbing of off-gases with caustic or lime, should there be hydrogen chloride gas present, or with water in cases where nonchlorinated liquid wastes are being incinerated. Given the proper temperature and dwell time, the Agency's data show that greater than 9.9 percent removal of organic pollutants can be effected so that a potential air pollution problem is not created. Incineration is not recommended for organic pesticides containing heavy metals such as mercury, copper, lead, cadmium, arsenic, or zinc due to the potential for air and solid waste contamination.

26. *Comment:* Deep well injection should be considered as a BAT treatment technology.

Response: The Agency is not addressing deep well disposal under these proposed regulations because wastewater disposed of in this manner is not discharged to a POTW or navigable waters. Deep well disposal is regulated under the SDWA and RCRA. However, pesticide process wastewaters which are currently disposed of by deep well injection will be covered under these regulations should the manufacturer(s) discontinue the current practice and begin discharging those wastewaters to a POTW or navigable waters.

27. *Comment:* It appears that a significant portion of the priority pollutant problem will be transferred from water to air through the use of biological oxidation for treatment of volatile priority pollutants. The treatment technology recommended by the Agency should reflect a total environmental concern.

Response: Volatile emissions from recommended treatment technologies such as biological oxidation may pose a potential air pollution problem. The Agency qualitatively considered the

total nonwater quality aspects of these proposed regulations as discussed in Section VIII of the Technical Development Document and found these non-water quality aspects of the proposed regulation to be insiginficant based upon the available data. The Agency, will consider any additional data submitted concerning the atmospheric release of any pollutant proposed for regulation. Also see response to comment C–24. The Agency is currently conducting studies to quantify amounts of priority pollutants that are stripped from biological systems.

28. *Comment:* The claimed reduction efficiencies of pollutants across a carbon adsorption treatment system are overstated.

Response: The data presented in Section VI of the Technical Development Document support the Agency's contention that the specified pollutant removals across a carbon system can be economically achieved. Also see responses to comments C–19 and C–20.

G. The following comments pertain to the methodology used in developing the proposed effluent limitations guidelines and standards. For additional information on this subject please refer to Sections IX and XII of the Technical Development Document.

1. *Comment:* EPA should repromulgate the BPT regulations with higher allowable discharges of pesticides (Subcategories 8 and 9) to reflect more recent findings and data generated during the current study.

Response: Data gathered subsequent to the decision of the First Circuit Court of Appeals upholding the BPT regulations support the Agency's position that the BPT effluent limitations are reasonable in both cost and effluent reduction benefits.

2. *Comment:* The meaning of "long-term average" should be clarified with respect to the daily and monthly limitations.

Response: The long-term average is defined as the average effluent for a pollutant at a particular point in the treatment system, based on available data. The long-term average chosen for each pollutant was determined by evaluation of all long-term average effluents currently being achieved or judged achievable for that pollutant through application of the recommended best available treatment technologies. In the development of effluent limitations guidelines and standards, the variability of daily and monthly average discharge levels were considered. The derivation of variability factors was based on statistical analyses of the effluent levels achieved by plants with long-term data available.

The proposed daily and 30-day effluent limitations and standards for each pollutant were derived by multiplying the long-term average for that pollutant by the daily and 30-day variability factors. For a more detailed explanation, see Section XV of the Technical Development Document.

3. *Comment:* Some contractor recommended BAT levels are stricter than those currently recommended for drinking water. Requiring direct dischargers to meet limits tighter than those for drinking water is unnecessary.

Response: Pursuant to Sections 301, 304, and 307 of the Act, the BAT effluent limitations guidelines proposed in the notice were derived based on the documented effluent reduction capabilities of the best available pollutant control technologies economically achievable. (See Section IX of the Technical Development Document.)

4. *Comment:* As an alternative to the contractor recommended limitations and standards, one commenter submitted a table of recommended long-term average BAT effluent limitations and pretreatment standards for priority and nonconventional pesticide pollutants in Subcategories 1 through 11. This table is available for public review in the Administrative Record.

Response: The Agency derived the proposed standards and limitations based on the best available treatment technology by consideration of:

1. Effluents currently achieved in the industry,
2. Effluents currently achieved outside the industry (transfer technology),
3. Design effluents achievable by applying BAT technology to maximum design raw waste loads for the industry,
4. Effluents achievable by applying BAT technology to raw waste loads at specific plants, and
5. Amount of wastewater generated and method(s) of disposal.

These data and supporting information are available for review in the Technical Development Document and the Administrative Record. No data and supporting information was supplied to document this commenter's recommended effluent limitations and standards; hence, the Agency cannot evaluate them. However, the Agency invites submission of the data and appropriate methodology from which the commenter's recommended limitations and standards were derived so that an evaluation may be conducted.

5. *Comment:* We assume the Agency used the lowest observable effluent concentrations (LOEC's) reported in the recently published first draft of the Agency's Treatability Manual (EPA–600/8–80–042e, July 1980, Table D–1, Volume V Summary). These values are not representative of the industry and are not statistically valid for purposes of setting effluent limitations. Discharge limitations should be based on reasonably achievable values obtained from representative plant treatment operations.

Response: The Agency did not use the LOEC numbers.

6. *Comment:* Indicator pollutants should be employed to lighten the regulatory and analytical load.

Response: The Agency has attempted to lessen the regulatory and analytical requirements of these proposed limitations and standards by designating each of the 126 priority pollutants as of primary, dual, or secondary significance. By use of the methodology outlined in Section IX of the Technical Development Document, the Agency has determined that regulation of specific priority pollutants (of primary significance) within a priority pollutant group will effectively control the discharge of other priority pollutants in that group. For example, the Agency's data show that by controlling the levels of 1,2-dichloroethane and/or tetrachloroethylene in a wastewater discharge, where these and other chlorinated ethanes and ethylenes are present, the levels of all members of this priority pollutant group in that discharge will effectively be controlled. Thus, the number of priority pollutants being proposed for regulation represent the minimum required to ensure the control of the majority of the remaining priority pollutants.

7. *Comment:* The methodology for designating priority pollutants as pollutants of primary and secondary significance should be further evaluated.

Response: This methodology has been fully evaluated based on available data. The objective was to limit the number of pollutants regulated to the minimum required to ensure compliance with the effluent levels technically achievable, while also reducing the possibility that discharges of wastewater would contribute to adverse effects on aquatic life or human health. The rationale for pollutant selection was based on evaluations of all raw waste load level and presence, availability of analytical methods and technical and economic data, and environmental effects. The commenter is referred to Section IX of the Technical Development Document for a detailed discussion of the selection of pollutant parameters proposed for regulation. The Agency will reevaluate

this methodology between proposal and promulgation after additional data is submitted. Any other suggestions on this subject will also be considered.

8. *Comment:* The Technical Development Document should establish that the discharge of secondary pollutants will be controlled by the application of methods to control primary pollutants.

Response: The data available in the Administrative Record substantiate the Agency's contention that the discharge of the majority of the priority pollutants present in industry wastewater will be controlled by regulation of only 34 priority pollutants. These 34 priority pollutants of primary significance represent the extremes of treatability in each priority pollutant group and, therefore, methods to control these pollutants will be appropriate for controlling the majority of the secondary pollutants.

9. *Comment:* When determining a "reasonable long-term average" for the discharge of 2,4-dichlorophenol, why was a relatively conservative reduction percentage used when less conservative values were equally justified by the data? The nonconventional pesticide pollutant long-term average should be the average, not the "highest level achievable, maximum amount of pesticide remaining".

Response: When determining a reasonable long-term average for a specific priority pollutant, a reduction percentage was selected based on a range of data obtained from pilot-scale studies, treatability studies, and transfer technology from other industries. The use of effluent values judged achievable in the selection of long-term averages was based on historical data knowledge of system performance capabilities and economic factors. Based on the above-mentioned considerations, and in comparison to the recommended treatment unit designs, reduction efficiency values were selected which are judged representative of properly designed and operating treatment systems.

The "highest level achievable" is in fact a long-term average for the least treatable pesticide in a subcategory. The Agency used the highest level achievable in determining the nonconventional pesticide pollutant long-term average rather than an average level achievable because the selection of any lower value (an average level achievable) would indicate that pollutant reduction via recommended BAT treatment systems could not be accomplished by all manufacturers within a given subcategory. Recommendation of a more stringent treatment system (Levels 2 and 3; see Section XII of the Technical Development Document) would impose an unjustified economic burden.

10. *Comment:* The contractor has taken a simplistic view of complex manufacturing facilities with regard to proposal of effluent guidelines. Many different manufacturing processes, with numerous sources of discharge, contribute to the loading of a common waste treatment facility and production rates may change within a short period of time. The regulations should focus on treatment prior to point source discharge and not on individual product/process discharge points to the treatment system. The contractor has not specified how wastewater from the combined facilities is to be treated and how the long-term, 30-day, and daily limitations will be determined for and apply to a complex manufacturing facility. The Agency must determine now to interpret the contractor's recommendations before the BAT regulations are proposed.

Response: The Agency recognizes the complex nature of the pesticide industry and has attempted to propose fair and reasonable effluent guidelines based on information supplied by the industry and collected by the Agency.

As an example of the Agency's understanding of the complexity of this industry, the process chemistry of each pesticide process was evaluated for potential pollutant discharge rather than assuming that like pollutants are generated from the manufacture of structurally similar products.

Although it is recognized that many facilities currently utilize common waste treatment systems, the Agency feels that this practice may need to be supplemented by treatment of segregated pesticide process wastewaters to remove priority and nonconventional pesticide pollutants before they are comingled and diluted with non-pesticide wastewater. The recommended pollutant removal technologies outlined in the Technical Development Document have general application throughout the industry. However, based on information provided to the Agency, the use of these specialized technologies for the removal of several of the pollutants common to pesticide industry wastewaters is in many cases most economically effected at the source (i.e. product/process discharge point). Site-specific wastewater monitoring and treatability studies should be conducted at a particular facility to insure that the most cost-effective design and deployment of treatment technologies, recommended or otherwise, is applied. If this commenter possesses any data which indicate otherwise, please submit them to the Agency.

These proposed regulations apply only to pesticide manufacturing and formulating/packaging processes and the Agency is recommending the use of specific technologies to treat wastewater generated by these manufacturing or formulating processes. The applicability of these technologies to the treatment of wastewater from combined facilities is outside the scope of this study and must be evaluated by permit writers and manufacturers on a case-by-case basis.

The proposed limitations and standards are expressed as mass-based limits (lbs of pollutant/1000 lbs of pesticide product) and are to be applied in these terms to both simple and complex manufacturing facilities, regardless of the type of treatment employed. See response to comment G–11 and response to Comment E–4 regarding application of the proposed limitations and standards and monitoring of segregated or comingled pesticide wastewater.

11. *Comment:* It is recommended that methylene chloride in wastewater be regulated according to the allowable effluent load for the entire plant, considering the sum effect of each effluent guideline on each process, instead of on a process by process basis.

Response: The Agency intends that these regulations be applied on a process by process basis in order to define the pollutants of concern and the allowable discharges for a particular parameter. The allowable effluent loading from each process, expressed as pounds of pollutant per 100 pounds of product, is to be summed over all processes contributing to a common discharge stream to yield the allowed effluent discharge for the entire plant.

12. *Comment:* How is the 30-day average to be applied when products are manufactured for less than 30 days and/or the product process wastewater is held up in the plant's sewage treatment system in excess of 30 days?

Response: In both instances, special provisions will be determined by the permit writer and incorporated into the permit on a case-by-case basis.

13. *Comment:* Permits obtained under these regulations should be specifically excluded from the RCRA system.

Response: Permits issued under authority of these regulations will not be excluded from RCRA requirements. These proposed regulations cover the discharge of wastewater generated during pesticide manufacturing and formulating/packaging processes. RCRA

regulations cover the treatment, storage, disposal, transportation and management of hazardous wastes.

14. *Comment:* Inconsistency exists between the COD design effluent levels presented in Table 7 and the recommended COD effluent levels presented in Tables 11, 12, and 20 of the briefing package.

Response: The values presented in Table 7 of the briefing package are design effluent levels whereas those presented in Tables 11, 12, and 20 are recommended effluent limitations.

15. *Comment:* Cyanide is a priority pollutant to be monitored in the process waste resulting from the manufacture of Lethane. Cyanide is also formed by natural activity of phytoplankton present in the biological treatment system. Will some allowance for this problem be made in the proposed limitation for cyanide discharge?(14)

Response: The Agency does not presently possess data which document this commenter's concern and therefore, no additional allowance for biologically-generated cyanide has been made in these proposed regulations. This commenter is requested to submit such data to the Agency so that an evaluation may be conducted and, if necessary, an allowance be made.

16. *Comment:* The contractor fails to recognize that process wastewaters containing identified priority pollutants are discharged to deep wells and to not impinge upon the NPDES permitted outfalls.

Response: The Agency evaluated all data available to develop the proposed effluent guidelines limitations and standards. However, limitations and standards for nonconventional pesticides were selected solely based on data provided by direct and indirect dischargers, respectively. Please see response to comment F–26.

17. *Comment:* It is recommended that when several s-triazine pesticides are produced concurrently at one site in small quantities, the permit writer be allowed the latitude to set daily and 30-day limits at the larger of either (a) the mass-based limitations set forth in the promulgated regulations or (b) concentrations of 3000 ug/l for the daily maximum and 1000 ug/l for the 30-day average.

Response: The Triazines are in the same subcategory and the pesticide limits will be the same on a mass basis. The 3000 mg/l and 1000 μg/l suggested values are unsubstantiated and therefore are not recommended.

18. *Comment:* The recommended nonconventional pesticide pollutant limitations and standards for the s-triazines are too stringent in light of the toxicity and environmental persistence of s-triazines and are inconsistent with other published criteria (such as water quality criteria and potable water allowances). It is recommended that the Agency propose regulations that make distinctions between pollutants of widely varying ecological impact. For those s-triazine pesticides with LD50's of 1000 mg/kg or greater, we propose the following:

30-day average: 0.310 lb/1000 lbs.
Daily maximum: 0.465 lb/1000 lbs.

Response: The Agency cannot evaluate the commenter's recommended nonconventional pesticide effluent limitations without the necessary data and supporting information from which they were derived. The commenter is requested to provide them so that an evaluation may be conducted. The proposed limitations and standards are technology based and are supported by information found in Section XV of the Technical Development Document and elsewhere in the Administrative Record.

19. *Comment:* The selection of a single treatment train as BAT is impractical when multi-product plants are involved. Matrix effects present in a combined effluent can lower the pollutant reduction efficiency which is achieved when treating wastewater emanating from a single pesticide process. Site-specific flexibility should be built into the regulations to allow for selection of treatments that provide the greatest cost/benefit result with respect to a combined effluent rather than a single process stream.

Response: A single treatment train for combined waste has been demonstrated to be less expensive and technologically acceptable. Matrix effects present in a combined effluent can be eliminated by proper design and maintenance. If this commenter possesses data which show that pollutant removal efficiencies are reduced when treating commingled, multi-product streams versus a segregated process stream, please submit them to the Agency. The Agency through a plant by plant evaluation of this industry has considered site specific requirements and has recommended site-specific treatment units. This information, along with associated costs is found in both the Technical Development Document and the Economic Analysis Report. If a particular manufacturer chooses to treat contrary to the Agency's recommended scheme, the Agency suggests that treatability studies be run prior to full scale installation.

20. *Comment:* It is recommended that "tiered" effluent limitations be incorporated into the regulations to allow for the discharge of the low pollutant loadings inherently present in storm water run-off during periods of heavy precipitation.

Response: The Agency recommends that stormwater be segregated from the process wastewater in order to maintain proper operation of the process wastewater treatment systems. Stormwater is usually a concern that is handled by the permit issuing authority on a case-by-case situation. These regulations are not the forum for addressing this issue. If a "tiered" effluent limitation were to be incorporated in the regulations, the industry would have to provide data to substantiate any resulting "rainfall event" excursions from normal operations. This data has not been provided.

H. The following are additional comments which apply to the pesticide industry regulations but cannot be classified under the previous subject headings.

1. *Comment:* Unnecessary dichotomies exist in the classification of many compounds recommended to be regulated; several compounds may be regulated in any of several ways: (1) "priority pollutant" nonpesticide, (2) "priority pollutant pesticide", (3) "non-priority pollutant pesticide". Pretreatment and BAT discharge limitations should be identical for compounds listed as both "priority pollutants" and "non-priority pollutant pesticides".

Response: The Agency has corrected these dichotomies such that the pollutant parameters being proposed for regulation are consistently categorized as either priority (toxic), conventional, or nonconventional pollutants.

2. *Comment:* To minimize confusion among trade names, generic names, etc., pesticides should be identified using the Chemical Abstract System. (11)

Response: In an effort to report information as provided by the industry and conserve space, widely used trade names, generic names and contractor-designated abbreviations have been employed. For reference, pesticides in Subcategories 1 through 11 are identified by IUPAC nomenclature in Section XX, Appendix 3 of the Technical Development Document.

3. *Comment:* It is recommended that the nomenclature employed to identify the following pesticides be revised as follows:

Name of pesticides as listed in B. P.	Recommended name
Tokuthion	Prothiophos
Bolstar	Sulprofos

Name of pesticides as listed in B. P.	Recommended name
Demeton-s	Demeton
Demeton-o	Demeton

Response: The nomenclature used in the briefing package for the abovementioned compounds was that which was reported by industry in the response to the Agency 308 questionnaire. The common names Demeton, Demeton-s and Demeton-o and the trade names Tokuthion and Bolstar will continue to be used at this time.

4. *Comment:* The equation to convert between concentration (mg/l) and mass base loading (lbs/1000 lbs) is mg/l=27 (lbs/100). This equation applies to "priority pollutants" and "non-priority pollutant pesticides".

Response: The equation mg/l=27 (lbs/1000 lbs) is substantially correct; the conversion factor is actuallly 26.6. It is derived by taking the reciprocal of the design flow ratio (4500 e^6 MGD of wastewater per 1000 lbs of production) times 8.34, i.e., 1/4500 e^6 × 8.34).

5. *Comment:* The Agency's intents to educate regional permit writers in the proper application of these regulations is commended. It is recommended that state permit writers be included in the program if possible and that a policy for monitoring frequency be suggested as part of the curriculum.

Response: The Agency intends to educate both regional and state permit writers on selected aspects of these proposed regulations. Guidance for establishing monitoring requirements may be included in this program; however, monitoring frequency is usually left to the discretion of the local permit writing authority.

6. *Comment:* A similar briefing should coincide with the release of the Technical Development Document and Proposed Regulation.

Response: The documents accompanying this preamble contain far more information than could be presented in a public briefing of reasonable length and are to act in lieu of the same.

EPA proposes to revise 40 CFR Part 455 to read as follows:

Editors note.—The Agency is not making substantive changes to the previously promulgated Sections in 40 CFR Part 455 Subparts A 455.20, 455.21 and 455.22; Subpart B 455.30, 455.31 and 455.32; Subpart C 455.40, 455.41 and 455.42; Subpart F 455.72; Subpart G 455.82; Subpart H 455.92; Subpart I 455.102; Subpart J 455.112; Subpart K 455.122; and Subpart L 455.132, and EPA is not inviting comment on the substantive provisions of these subparts. EPA has included these previously promulgated sections for completeness.

PART 455—PESTICIDE CHEMICALS

Sec.
455.10 General definitions.
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Subpart A—Best Practicable Control Technology Currently Available for Organic Pesticide Chemicals Manufacturing Subcategories in Subparts F through L

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455.30 Applicability; description of the metallo-organic pesticide chemicals manufacturing subcategory.
455.31 Specialized definitions.
455.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
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455.40 Applicability; description of the pesticide chemicals formulating and packaging subcategory.
455.41 Specialized definitions.
455.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
455.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional control technology (BCT).
455.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).
455.45 New source performance standards (NSPS)
455.46 Pretreatment standards for existing sources (PSES)
455.47 Pretreatment standards for new sources (PSNS)

Subpart D—Subcategory 1

455.50 Applicability; description of Subcategory 1.
455.51 Specialized definitions.
455.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.54 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.55 New source performance standards (NSPS).
455.56 Pretreatment standards for existing sources (PSES).
455.57 Pretreatment standards for new sources (PSNS).

Subpart E—Subcategory 2

455.60 Applicability; description of Subcategory 2.
455.61 Specialized definitions.
455.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.64 Effluent limitations representing the degree of effluent reduction attainable by the application of the best technology economically achievable (BAT).
455.65 New source performance standards (NSPS).
455.66 Pretreatment standards for existing sources (PSES).
455.67 Pretreatment standards for new sources (PSNS).

Subpart F—Subcategory 3

455.70 Applicability; description of Subcategory 3.
455.71 Specialized definitions.
455.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.74 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.75 New source performance standards (NSPS).

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455.76 Pretreatment standards for existing sources (PSES).
455.77 Pretreatment standards for new sources (PSNS).

Subpart G—Subcategory 4

455.80 Applicability; description of Subcategory 4.
455.81 Specialized definitions.
455.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.84 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
855.85 New source performance standards (NSPS).
455.86 Pretreatment standards for existing sources (PSES).
455.87 Pretreatment standards for new sources (PSNS).

Subpart H—Subcategory 5

455.90 Applicability; description of Subcategory 5.
455.91 Specialized definitions.
455.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the application of the best conventional pollutant control technology (BCT). [Reserved]
455.94 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.95 New source performance standards (NSPS).
455.96 Pretreatment standards for existing sources (PSES).
455.97 Pretreatment standards for new sources (PSNS).

Subpart I—Subcategory 6

455.100 Applicability; description of Subcategory 6.
455.101 Specialized definitions.
455.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.104 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.105 New source performance standards (NSPS).
455.106 Pretreatment standards for existing sources (PSES).
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455.107 Pretreatment standards for new sources (PSNS).

Subpart J—Subcategory 7

455.110 Applicability; description of Subcategory 7.
455.111 Specialized definitions.
455.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.114 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.115 New source performance standards (NSPS).
455.116 Pretreatment standards for existing sources (PSES).
455.117 Pretreatment standards for new sources (PSNS).

Subpart K—Subcategory 8

455.120 Applicability; description of Subcategory 8.
455.121 Specialized definitions.
455.122 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.124 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT)
455.125 New source performance standards (NSPS).
455.126 Pretreatment standards for existing sources (PSES).
455.127 Pretreatment standards for new sources (PSNS).

Subpart L—Subcategory 9

455.130 Applicability; description of Subcategory 9.
455.131 Specialized definitions.
455.132 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.134 Effluent limitations representing the degree of effluent reduction attainable by the application of the best technology economically achievable (BAT).
455.135 New source performance standards (NSPS).
455.136 Pretreatment standards for existing sources (PSES).
455.137 Pretreatment standards for new sources (PSNS).

Subpart M—Subcategory 10

Sec.
455.140 Applicability; description of Subcategory 10.
455.141 Specialized definitions.
455.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]
455.144 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.145 New source performance standards (NSPS).
455.146 Pretreatment standards for existing sources (PSES).
455.147 Pretreatment standards for new sources (PSNS).

Subpart N—Subcategory 11

455.150 Applicability; description of Subcategory 11.
455.151 Specialized definitions.
455.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
455.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional control technology (BCT).
455.154 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.155 New source performance standards (NSPS).
455.156 Pretreatment standards for existing sources (PSES).
455.157 Pretreatment standards for new sources (PSNS).

Subpart O—Priority Pollutants Regulated

455.160 Priority pollutants required to be regulated in pesticide active ingredient manufacturing wastewaters.

Authority: Secs. 301 and 304, Federal Water Pollution Control Act, as amended (33 U.S.C. 1311, 1314, 86 Stat. 816 et seq. ("the Act")).

§ 455.10 General definitions.

As used in this part:

(a) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(b) "Active ingredient" means an ingredient of a pesticide which is intended to prevent, destroy, repel, or mitigate any pest.

(c) "Pesticide chemicals" means the sum of all active ingredients manufactured at each facility covered by this part.

(d) "Pest" means: (1) Any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except virusus, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) of Pub. L. 94–140, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

(e) Except as provided in this regulation, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this part, except for the methods of analysis for the nonconventional pesticides which will be in a companion rulemaking package which will be published as part 455 under the authority of Section 401 of the Clean Water Act.

(f) "Priority pollutants" means the toxic pollutants listed in 40 CFR 401.15.

(g) "Nonconventional pesticide pollutants" means all pesticide active ingredients that are not toxic pollutants under § 401.15 or conventional pollutants under 401.16 and for which BAT and NSPS effluent limitations guidelines and pretreatment standards are established in this part.

455.11 Compliance date for Pretreatment Standards for Existing Sources (PSES).

All dischargers subject to PSES in this part must comply with the standards no later than July 1, 1984.

Subpart A—Best Practicable Control Technology Currently Available for Organic Pesticide Chemicals Manufacturing Subcategories in Subparts F Through L

§ 455.20 Applicability; description of the organic pesticide chemicals manufacturing subcategory.

(a) For the purpose of calculating effluent limitations for COD, BOD*5*, and TSS, the provisions of this subpart are applicable to discharges resulting from the manufacture of organic active ingredients, excluding the following: Allethrin, Benzyl Benzoate, Biphenyl, Bisethylxanthogen, Chlorophacinone, Coumafuryl, Dimethyl Phthalate, Diphacinone, Endothall, Acid, EXD (Herbisan), Gibberellic Acid, Glyphosate, Methoprene, Naphthalene Acetic Acid, Phenylphenol, Piperonyl Butoxide, Propargite, 1,8 Naphthallic Anhydride, Quinomethionate, Resmethrin, Rotenone, Sulfoxide, Sodium Phenylphenate, Triazxine compounds (both symmetrical and asymmetrical) and Warfarin and similar anticoagulants.

(b) For the purpose of calculating effluent limitations for organic pesticide chemicals, the provisions of this subpart are applicable to discharges resulting from the manufacture of the following organic active ingredients: Aldrin, BHC, Captan, Chlordane, DDD, DDE, DDT, Dichloran, Dieldrin, Endosulfan, Endrin, Heptachlor, Lindane, Methoxychlor, Mirex, PCNB, Toxaphene, Trifluralin, Azinphos Methyl, Demeton-O, Demeton-S, Diazinon, Disulfoton, Malathion, Parathion Methyl, Parathion Ethyl, Aminocarb, Carbaryl, Methiocarb, Mexacarbate, Propoxur, Barban, Chlorpropham, Diuron, Fenuron, Fenuron-TCA, Linuron, Monuron, Monuron-TCA, Neburon, Propham, Swep, 2,4–D, Dicamba, Silvex, 2,4,5–T, Siduron, Perthane, and Dicofol.

(c) The intermediates used to manufacture the active ingredients and active ingredients used solely in experimental pesticides (less than 5,000 kg per year) are excluded from coverage in this subpart. Insecticidal pathogenic organisms such as Bacillus thuringiensis, insect growth hormones, plant extracts such as pyrethrins; sex attractants and botanicals such as Rotenone are also excluded from coverage in this subpart.

§ 455.21 Specialized definitions.

(a) "Organic active ingredients" means carbon-containing active ingredients used in pesticides, excluding metallo-organic active ingredients.

(b) "Total organic active ingredients" mens the sum of all organic active ingredients covered by § 455.20(a) which are manufactured at a facility subject to this subpart.

(c) "Organic pesticide chemicals" means the sum of all organic active ingredients listed in § 455.20(b) which are manufactured at a facility subject to this subpart.

§ 455.22 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 125.30–125.32, 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):

Effluent limitations	Effluent characteristics	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
COD	13.000	9.0000
BOD	7.400	1.6000
TSS	6.100	1.800
Organic pesticide chemicals	.010	.0018
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

Note.—For COD, BOD*5*, and TSS, metric units; kilogram/1000 kg of total organic active ingredients English units; pound/1000 lb of total organic active ingredients. For organic pesticide chemicals-metric units; kilogram/1000 kg of organic pesticide chemicals. English units; pound/1000 lb of organic pesticide chemicals.

Subpart B—Metallo-Organic Pesticide Chemicals Manufacturing Subcategory

§ 455.30 Appliability; description of the metallo-organic pesticide chemicals manufacturing subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of metallo-organic active ingredients containing mercury, cadmium, arsenic, or copper. The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.31 Specialized definitions.

(a) "Metallo-organic active ingredients" means carbon containing active ingredients containing one or more metallic atoms in the structure.

(b) [Reserved].

§ 455.32 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 125.30–125.32, 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.

§ 455.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional 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 control technology (BCT): The limitations are the same (no discharge of process wastewater) as those established under best practicable control technology currently available (40 CFR 455.32). The limitations apply to all wastewaters from the manufacture of pesticide active ingredients containing mercury, cadmium, arsenic or copper.

§ 455.34 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 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 control technology economically achievable (BAT): The limitations are the same (no discharge of process wastewater) as those established under best practicable control technology currently available (40 CFR 455.32). The limitations apply to all wastewaters from the manufacture of pesticide active ingredients containing mercury, cadmium, arsenic or copper.

§ 455.35 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 in navigable waters. The limitations apply to all wastewaters from the manufacture of pesticide active ingredients containing mercury, cadmium, arsenic, or copper.

§ 455.36 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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): There shall be no discharge of process wastewater pollutants in navigable waters. The limitations apply to all wastewaters from the manufacture of pesticide active ingredients containing mercury, cadmium, arsenic, or copper.

§ 455.37 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 401.13, any new source subject to this subpart that 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 in navigable waters. The limitations apply to all wastewaters from the manufacture of pesticide active ingredients containing mercury, cadmium, arsenic, or copper.

Subpart C—Pesticide Chemicals Formulating and Packaging Subcategory

§ 455.40 Applicability; description of the pesticide chemicals formulating and packaging subcategory.

The provisions of this subpart are applicable to discharges resulting from all pesticide formulating and packaging operations.

§ 455.41 Specialized definitions.

(a) Formulation/packaging—The physical mixing of technical grade pesticide ingredients into liquids, dusts and powders, or granules, and their subsequent packaging in a marketable container.

(b) [Reserved].

§ 455.42 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 125.30–125.32, 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. The limitations apply to all wastewaters from the formulation and packaging of all pesticides.

§ 455.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional 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 control technology (BCT): The limitations are the same (no discharge of process wastewater) as those established under best practicable control technology currently available (40 CFR 455.42). The limitations apply to all wastewaters from the formulation and packaging of all pesticides.

§ 455.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available control 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 control technology economically achievable (BAT): The limitations are the same (no discharge of process wastewater) as those established under best practicable control technology currently available (40 CFR 455.42). The limitations apply to all wastewaters from the formulation and packaging of all pesticides.

§ 455.45 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 in navigable waters. The limitations apply to all wastewaters from the formulation and packaging of all pesticides.

§ 455.46 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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): There shall be no discharge of process wastewater pollutants in navigable waters. The limitations apply to all wastewaters from the formulation and packaging of all pesticides.

§ 455.47 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.13 and 403.7, any new source subject to this subpart that 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 in navigable waters. The limitations apply to all wastewaters from the formulation and packaging of all pesticides.

Subpart D—Subcategory 1

§ 455.50 Applicability; description of subcategory 1.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active

ingredients in subcategory 1, which are as follows:

Aldicarb	KN methyl
Atrazine (Plant 1)+	Maleic hydrazide
Bendiocarb	Metham
Benomyl	Methoprene+
Benzyl Benzoate+	Mevinphos
Biphenyl (Plant 2)+	1,8-Napthalic Anhydride+
Busan 40	Niacide
Busan 85	Norflurazon
Captafol	Octhilinone
Carbam-S	Oryzalin
Carbofuran	Oxamyl
Chloropicrin (Plant 3)	PCP salt
Coumachlor+	Permethrin
Coumafuryl+	Phorate
Coumaphos	Piperonyl butoxide+
Coumatetralyl+	Polyphase antimildew
Dalapon	Propargite+
Dazomet	Propionic acid
DBCP	8 Quinolinol citrate
Dichlorvos	8 Quinolinol Sulfate
Dimethoxane	Sodium monofluoracetate (Plant 4)
Dinocap	Sulfallate
Dinoseb	Tebuthiuron
Dioxathion	Terbacil
Diphacinone+	Terbufos
Endothall+	Thionazin
Ethylene dibromide	Tributyltin fluoride
EXD+	Tricyclazole
Fenarimol	Vancide PA
Ferbam	Warfarin+
Folpet	
HAE	
HAMP	
Isopropalin	

+ **Note.**—Section 455.52 only applies to the active ingredient with this symbol. All other active ingredients are covered by the previously promulgated BPT in Subpart A § 455.22.

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.51 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual production. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (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 pollutant control technology (BPT).

SUBPART D

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
pH	[2]	[2]

[1] All units except pH are pounds per 1,000 lbs (kg/kkg).
[2] Within the range of 6.0 to 9.0 at all times.

§ 455.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.54 Effluent limitations 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 D

Pollutant or pollutant property	BPT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.258	0.0457
Priority Pollutants: [3]		
2,4-Dinitrophenol	0.0133	0.00718
Phenol	0.0133	0.00474
N-nitrosodi-n-propylamine	0.000169	0.0000485

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Atrazine (Plant 1), Benomyl, Busan 40, Busan 85, Carbam-s, Carbofuran, Coumaphos, DBCP, Dichlorvos, Dinoseb, Dioxathion, Ferbam, Isopropalin, KN Methyl, Metham, Mevinphos, Niacide, Oxamyl, PCP Salt, Phorate, Terbacil, Terbufos, Tricyclazole.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.55 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART D

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.258	0.0457
Priority Pollutants: [3]		
2,4-Dinitrophenol	0.0133	0.00718
Phenol	0.0133	0.00474
N-nitrosodi-n-propylamine	0.000169	0.0000485
COD	13.000	9.0000
BOD5	7.400	1.6000

SUBPART D—Continued

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
TSS	6.100	1.8000
pH	[4]	[4]

[1] All units except pH are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Atrazine (Plant 1), Benomyl, Busan 40, Busan 85, Carbam-s, Carbofuran, Coumaphos, DBCP, Dichlorvos, Dinoseb, Dioxathion, Ferbam, Isopropalin, KN Methyl, Metham, Mevinphos, Niacide, Oxamyl, PCP Salt, Phorate, Terbacil, Terbufos, Tricyclazole.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4] Within the range of 6.0 to 9.0 at all times.

§ 455.57 Pretreatment standards for existing sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works (POTWs) must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSNS):

SUBPART D

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.299	0.0528
Priority Pollutants: [3]		
2,4-Dinitrophenol	0.133	0.0718
Phenol	0.133	0.0474
N-nitrosodi-n-propylamine	0.000169	0.0000485

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Atrazine (Plant 1), Benomyl, Busan 40, Busan 85, Carbam-s, Carbofuran, Coumaphos, DBCP, Dichlorvos, Dinoseb, Dioxathion, Ferbam, Isopropalin, KN Methyl, Metham, Mevinphos, Niacide, Oxamyl, PCP Salt, Phorate, Terbacil, Terbufos, Tricyclazole.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.56 Pretreatment standards for new sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSES):

SUBPART D

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.299	0.0528
Priority Pollutants: [3]		
2,4-Dinitrophenol	0.133	0.0718
Phenol	0.133	0.0474
N-nitrosodi-n-propylamine	0.000169	0.0000485

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Atrazine (Plant 1), Benomyl, Busan 40, Busan 85, Carbam-s, Carbofuran, Coumaphos, DBCP, Dichlorvos, Dinoseb, Dioxathion, Ferbam, Isopropalin, KN Methyl, Metham, Mevinphos, Niacide, Oxamyl, PCP Salt, Phorate, Terbacil, Terbufos, Tricyclazole.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart E—Subcategory 2

§ 455.60 Applicability; description of Subcategory 2.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 2, which are as follows:

Alachlor
Allethrin+
AOP
Aspon
Benfluralin
Bensulide
Bentazon
Benzethonium chloride
Benzylbromoacetate
Bifenox
Benzethonium chloride
Benzylbromoacetate
Bifenox
Bolstar
Bromacil
Bromoxynil
Bromoxynil octanoate
Buson 90
Butachlor
Buthlate
Carbendazim
Carbophenothion
CDN
Chloramben
Chlorbenzene
Chlorbenzilate
Chlorphacinone+
Chlorpyrifos
Chlorpyrifos methyl
Cycloate
Cycloheximide
Cycloprate
Cyhenatin
Cythioate
2.4-D isobutyl ester
2.4-D isooctyl ester (Plant 5)
2.4-DB
2,4-DB isobutyl ester
2,4-DB isooctyl ester
DCPA
Deet
Demeton
Dichlofenthion
Dichlorbenzene, ortho
Dichlorbenzene, para
Dichlorophen
Dichlorprop
Diphenamid
Diphenylamine
EPN
EPTC
Ethalfluralin
Ethion
Ethoxyquin, 66%
Ethoxyquin, 86%
Etridiazole
Famphur
Fenthion
Fentin hydroxide
Fluchloralin
Famphur
Fenthion
Fentin hydroxide
Fluchloralin
Fluridone
Fonofos
Giv-gard
Glyphosate+
Hexachlorophene
Hexazinone+
Hyamine 2389
Hyamine 3500
Kathon 886
Kinoprene
MCPA
MCPA isooctyl ester
MCPP
Mephosfolan
Methamidophos
Metyomyl
Methylbenzethonium chloride
Methyl bromide
MGK 264
MGK 326
Molinate
Nabam
Naled
Napropamide
Naptalam
Nitrofen
NMI
Oxydemeton
Oxyflurorfen
Paraquat
PBED
PCP
Phenylphenol+
Phenylphenol sodium salt+
Phosfolan
Phosmet
Pindone
Piperalin
Profluralin
Pronamide
Propachlor
Propanil
Quinomethionate+
RH-787
Ronnel
Rotenone+
Stirofos
Sulfoxide+
Temephos
Thiofanox
Tokuthion
Triadimefon
Tributyltin oxide (Plant 6)
Trichlorobenzene
Trichloronate
Vernolate

+ Note.—Section 455.62 only applies to the active ingredient with this symbol. All other active ingredients are covered by the previously promulgated BPT in Subpart A § 455.22.

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual production. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (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 pollutant control technology (BPT).

SUBPART E

BPT effluent limitations [1]	Pollutant or pollutant property	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	13.000	9.000
BOD [5]	7.400	1.6000
TSS	6.100	1.800
pH	(2)	(2)

[1] All units except pH are pounds per 1,000 lbs (kg/kkg).
[2] Within the range of 6.0 to 9.0 at all times.

§ 455.63 Effluent limitations representing the degree fo effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.64 Effluent limitations 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).

SUBPART E

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.339	0.0751
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Chlorobenzene	0.00278	0.000870
1, 2-Dichlorobenzene	0.339	0.0751
1,4-Dichlorobenzene	0.339	0.0751
Toluene	0.00278	0.000781
1,2,4-Trichlorobenzene	0.339	0.0751
Carbon Tetrachloride	0.00278	0.00111
Chlorform	0.00278	0.00111
Methyl bromide	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
2,4-Dichlorophenol	0.0133	0.00718
4-Nitrophenol	0.0133	0.00984
Pentachlorophenol	0.0133	0.00718
Phenol	0.0133	0.00474
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944
N-nitrosodi-n-propylamine	0.000169	0.0000485

[1] All units are pounds per 1,000 lbs (kg/kkg)
[2] Applies only to Alachlor, AOP, Benfluralin, Bentazon, Bolstar, Bromacil, Butachlor, Carbendazim, Carbophenothion, Chlorbenzilate, Chlorpyrifos, Chlorpyrifos Methyl, 2,4-D isobutyl ester, 2,4-D isooctyl ester (Plant 5), 2,4-DB, 2,4-DB Isobutyl Ester, 2,4-DB Isooctyl Ester, Deet, Demeton, Dichlofenthion, Ethalfluralin, Ethion, Etridiazole, Fenthion, Glyphosate, Hexazinone, Mephosfolan, Methomyl, Nabam, Nale, Profluralin, Propachlor, Ronnel, Stirofos, Triadimefon, Trichloronate.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.65 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART E

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.339	0.0751
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Chlorobenzene	0.00278	0.000870
1,2-Dichlorobenzene	0.339	0.0751
1,4-Dichlorobenzene	0.339	0.0751
Toluene	0.00278	0.000781
1,2,4-Trichlorobenzene	0.339	0.0751
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl bromide	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
2,4-Dichlorophenol	0.0133	0.00718
4-Nitrophenol	0.0133	0.00984
Pentachlorophenol	0.0133	0.00718
Phenol	0.0133	0.00474
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944
N-nitrosodi-n-propylamine	0.000169	0.0000485
COD	13.000	9.0000
BOD [5]	7.400	1.6000
TSS	6.100	1.8000
pH	(2)	(2)

[1] All units except pH are pounds per 1000 lbs (kg/kkg)
[2] Applies only to Alachlor, AOP, Benfluralin, Bentazon, Bolstar, Bromacil, Butachlor, Carbendazim, Carbophenothion, Chlorbenzilate, Chlorpyrifos, Chlorpyrifos Methyl, 2,4-D isobutyl ester, 2,4-D isooctyl ester (Plant 5), 2,4-DB, 2,4-DB Isobutyl Ester, 2,4-DB Isooctyl Ester, Deet, Demeton, Dichlofenthion, Ethalfluralin, Ethion, Etridiazole, Fenthion, Glyphosate, Hexazinone, Mephosfolan, Methomyl, Nabam, Nale,

Profluralin, Propachlor, Ronnel, Stirofos, Triadimefon, Trichloronate.
[2]Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4]Within the range of 6.0 to 9.0 at all times.

§ 455.66 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works (POTWs) must compy with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES).

SUBPART E

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.605	0.134
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Chlorobenzene	0.278	0.0870
1,2-Dichlorobenzene	0.605	0.134
1,4-Dichlorobenzene	0.605	0.134
Toluene	0.278	0.0781
1,2,4-Trichlorobenzene	0.605	0.134
Carbon Tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl Bromide	0.278	0.111
Methyl Chloride	0.278	0.111
Methylene Chloride	0.278	0.111
2,4-Dichlorophenolo	0.133	0.0718
4-Nitrophenol	0.133	0.0984
Pentachlorophenol	0.133	0.0718
Phenol	0.133	0.0474
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944
N-nitrosodi-n-propylamine	0.000169	0.0000485

[1]All units are pounds per 1,000 lbs (kg/kkg).
[2]Applies only to Alachlor, AOP, Benfluralin, Bentazon, Bolstar, Bromacil, Butachlor, Carbendazim, Carbophenothion, Chlorbenzilate, Chlorpyrifos, Chlorpyrifos Methyl, 2,4-D isobutyllester, 2,4-D isooctyl ester (Plant 5), 2,4-DB, 2,4-DB Isobutyl Ester, 2,4-DB Isooctyl Ester, Deet, Demeton, Dichlofenthion, Ethalfluralin, Ethion, Etridiazole, Fenthion, Glyphosate, Hexazinone, Mephosfolan, Methomyl, Nabam, Nale, Profluralin, Propachlor, Ronnel, Stirofos, Triadimefon, Trichloronate.
[3]Applies to all pesticide active ingredients in this subcategory, as neccessary (see § 455.160).

§ 455.67 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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 E

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.605	0.134
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Chlorobenzene	0.278	0.0870
1,2,-Dichlorobenzene	0.605	0.134

SUBPART E—Continued

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
1,4-Dichlorobenzene	0.605	0.134
Toluene	0.278	0.0781
1,2,4-Trichlorobenzene	0.605	0.134
Carbon Tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl Bromide	0.278	0.111
Methyl Chloride	0.278	0.111
Methylene Chloride	0.278	0.111
2,4-Dichlorophenol	0.133	0.0718
4-Nitrophenol	0.133	0.0984
Pentachlorophenol	0.133	0.0718
Phenol	0.133	0.0474
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944
N-nitrosodi-n-propylamine	0.000169	0.0000485

[1]All units are pounds per 1,000 lbs (kg/kkg).
[2]Applies only to Alachlor, AOP, Benfluralin, Bentzon, Bolstar, Bromacil, Butachlor, Carbendazim, Carbophenothion, Chlorbenzilate, Chlorpyrifos, Chlorpyrifos Methyl, 2,4-D isobutyl ester, 2,4-D isooctyl ester (Plant 5), 2,4-DB, 2,4-DB Isobutyl Ester, 2,4-DB Isooctyl Ester, Deet, Demeton, Dichlofenthion, Ethalfluralin, Ethion, Etridiazole, Fenthion, Glyphosate, Hexazinone, Mephosfolan, Methomyl, Nabam, Nale, Profluralin, Propachlor, Ronnel, Stirofos, Triadimefon, Tri>chloronate.
[3]Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart F—Subcategory 3

§ 455.70 Applicability; description of Subcategory 3.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 3, which are as follows:

Aquatreat DNM 30
Mancozeb
Maneb
Zineb (Plant 7)
Ziram (Plants 8, 9)

(b) The manufacture of intermediates used to manufactrue the active ingredients are excluded from coverage by this subpart.

§ 455.71 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual production. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients in this subpart are covered by the previously promulgated BPT in Subpart A § 455.22.

§ 455.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.74 Effluent limitations 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 F

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: pesticide pollutants [2]	0.0359	0.00662
Priority pollutants: [3] Zinc	0.0282	0.0122

[1]All units are pounds per 1,000 lbs (kg/kkg).
[2]Applies only to Mancozeb, Maneb, Zineb (Plant 7), and Ziram (Plants 8 and 9).
[3]Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.75 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART F

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: pesticide pollutants [3]	0.0359	0.00662
Priority pollutants: [3]		
Zinc	0.0282	0.0122
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
pH	(4)	(4)

[1]All units except pH are pounds per 1,000 lbs (kg/kkg).
[2]Applies only to Mancozeb, Maneb, Zineb (Plant 7), and Ziram (Plants 8 and 9).
[3]Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4]Within the range of 6.0 to 9.0 at all times.

455.76 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works (POTWs) must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES).

SUBPART F

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: pesticide pollutants [2]	0.110	0.0203
Priority pollutants: [3] zinc	0.0570	0.0247

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Mancozeb, Maneb, Zineb (Plant 7), and Ziram (Plants 8 and 9).
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

455.77 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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 F

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: pesticide pollutants [2]	0.110	0.0203
Priority pollutants: [3] zinc	0.0570	0.0247

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Mancozeb, Maneb, Zineb (Plant 7), and Ziram (Plants 8 and 9).
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart G—Subcategory 4

§ 455.80 Applicability; description of Subcategory 4.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 4, which are as follows:

Chlorothalonil
Fluometuron
Lethane 384
Methylene bisthiocyanate
Picloram
Thiabendazole

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.81 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual production. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients in this subpart are covered by the previously promulgated BPT in Subpart A § 455.22.

§ 455.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.84 Effluent limitations 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 G

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.01	0.0018
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon Tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl Chloride	0.00278	0.00111
Methylene Chloride	0.00278	0.00111
Cyanide	0.00244	0.00119
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944

[1] All units are pounds per 1,000 lb (kg/kkg).
[2] Applies only to Fluometuron.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.85 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART G

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.01	0.0018

SUBPART G—Continued

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon Tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl Chloride	0.00278	0.00111
Methylene Chloride	0.00278	0.00111
Cyanide	0.00244	0.00119
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944
COD	13.000	9.000
BOD5	7.400	1.600
TSS	6.100	1.800
pH	[4]	[4]

[1] All units except pH are pounds per 1,000 lb (kg/kkg).
[2] Applies only to Fluometuron.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4] Within the range of 6.0 to 9.0 at all times.

§ 455.86 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works (POTWs) must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART G

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.0185	0.00340
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon Tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl Chloride	0.278	0.111
Methylene Chloride	0.278	0.111
Cyanide	0.00488	0.00238
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944

[1] All units are pounds per 1,000 lb (kg/kkg).
[2] Applies only to Fluometuron.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.87 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSNS):

SUBPART G

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.0185	0.00340
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon Tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl Chloride	0.278	0.111
Methylene Chloride	0.278	0.111
Cyanide	0.00488	0.00238
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944

[1] All units are pounds per 1,000 lb (kg/kkg).
[2] Applies only to Fluometuron.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart H—Subcategory 5

§ 455.90 Applicability; description of Subcategory 5.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 5, which are as follows:

Acephate
Dienochlor
Fensulfothion
Monocrotophos
Pebulate
ZAC
Zineb (Plant 10)

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.91 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual operating days during that year. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients in this subpart are covered by the previously promulgated BPT in Subpart A § 455.22.

§ 455.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.94 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR Sections 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

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.0127	0.00234
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
Copper	0.0363	0.0118
Zinc	0.0282	0.0122
Hexachlorocyclopentadiene	0.00325	0.00122

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies only to Fensulfothion, ZAC, and Zineb (Plant 10).
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.95 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART H

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.0127	0.00234
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
Copper	0.0363	0.0118
Zinc	0.0282	0.0122
Hexachlorocyclopentadiene	0.00325	0.00122
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
ph	(4)	(4)

[1] All units except pH are lbs/1000 lbs (kg/kkg).
[2] Applies only to Fensulfothion, ZAC, and Zineb (Plant 10).
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see §455.160).
[4] Within the range of 6.0 to 9.0 at all times.

§ 455.96 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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 H

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.138	0.00255
Priority Pollutants: [3]		
Benzene	0.00278	0.0870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.111
Chloroform	0.00278	0.111
Methyl chloride	0.00278	0.111
Methylene chloride	0.00278	0.111
Copper	0.0733	0.0238
Zinc	0.0570	0.0247
Hexachlorocyclopentadiene	0.00643	0.00241

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies only to Fensulfothion, ZAC, and Zineb (Plant 10).
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see §455.160).

§ 455.97 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that introduces pollutants into publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS).

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.138	0.0255
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl chloride	0.278	0.111
Methylene chloride	0.00278	0.111
Copper	0.0733	0.0238
Zinc	0.0570	0.0247
Hexachlorocyclopentadiene	0.00643	0.00241

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies only to Fensulfothion, ZAC, and Zineb (Plant 10).
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see §455.160).

Subpart I—Subcategory 6

§ 455.100 Applicability; description of Subcategory 6.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active

ingredients in Subcategory 6, which are as follows:

Dodine
Metasol DGH
Nabonate

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.101 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual operating days during that year. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients in this subpart are covered by the previously promulgated BPT in Subpart A § 455.22.

§ 455.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.104 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achieavable (BAT).

Except as provided in 40 125.30–125.32, 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 I

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants:[2]		
Cyanide	0.00244	0.00119

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.105 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART I

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants:[2]		
Cyanide	0.00244	0.00119
COD	13.00	9.0000
BOD5	7.400	1.6000
TSS	6.400	1.8000
pH	([3])	([3])

[1] All units except pH are lbs/1000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[3] Within the range of 6.0 to 9.0 at all times.

§ 455.106 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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 I

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2] cyanide	0.00488	0.00238

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.107 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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 I

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2] cyanide	0.0488	0.00238

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart J—Subcategory 7

§ 455.110 Applicability; description of Subcategory 7.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 7, which are as follows:

Fenitrothion
TCMTB

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.111 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 45510(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual by the number of operating days during that year. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients in this subpart are covered by previously promulgated BPT in Subpart A § 455.22.

§ 455.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.114 Effluent limitations 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 J

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2]		
Benzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
Copper	0.0363	0.0118
Cyanide	0.00244	0.00119

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.115 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART J

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2]		
Benzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
Copper	0.0363	0.0118
Cyanide	0.00244	0.00119
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
pH	(3)	(3)

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide actve ingredients in this subcategory, as necessary (see § 455.160).
[3] Within the range of 6.0 to 9.0 at all times.

§ 455.116 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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 J

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2]		
Benzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl chloride	0.278	0.111
Methylene chloride	0.278	0.111
Copper	0.0733	0.0238
Cyanide	0.00488	0.00238

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.117 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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 J

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2]		
Benzene	0.278	0.0870
Toluene	0.278	0.0781

SUBPART J—Continued

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl chloride	0.278	0.111
Methylene Chloride	0.278	0.111
Copper	0.0733	0.0238
Cyanide	0.00488	0.00238

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart K—Subcategory 8

§ 455.120 Applicability; description of Subcategory 8.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 8, which are as follows:

Aminocarb
Chlordane
Endosulfan-Alpha
Endosulfan-Beta
Fenuron
Malathion
Methiocarb
Mexacarbate
Mirex
Monuron
Parathion ethyl
Parathion methyl
Propham
Propoxur
Trifluralin

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.121 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual divided by the number of operating days during that year. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.122 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients included in this subpart are covered by the previously promulgated BPT in Subpart A § 455.22.

§ 455.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.124 Effluent limitations 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 K

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority pollutants: [2]		
2,4-Dinitrophenol	0.0133	0.00718
4-Nitrophenol	0.0133	0.00984
Phenol	0.0133	0.00474
N-nitrosodi-n-propylamine	0.000169	0.0000485
Hexachlorcyclopentadiene	0.00325	0.00122

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.125 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART K

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide pollutants [2]	0.010	0.0018
Priority pollutants: [3]		
2,4-Dinitrophenol	0.0133	0.00718
4-Nitrophenol	0.0133	0.00984
Phenol	0.0133	0.00474
Endosulfan-Alpha	0.010	0.0018
Endosulfan-Beta	0.010	0.0018
Heptachlor	0.010	0.0018
N-nitrosodu-n-Propylamine	0.000169	0.0000485
Hexachlorcyclopentadiene	0.00325	0.00122
COD	13.000	9.0000
BOD 5	7.400	1.6000
TSS	6.100	1.8000
pH	(4)	(4)

[1] All units except pH are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Aminocarb, Fenuron, Malathion, Methiocarb, Mexacarbate, Mirex, Monuron, Parathion Ethyl, Parathion Methyl, Propham, Propoxur, Trifluralin.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4] Within the range of 6.0 to 9.0 at all times.

§ 455.126 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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 K

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average daily values for 30 consecutive days
Nonconventional: Pesticide pollutants [2]	0.010	0.0018
Priority pollutants: [3]		
2,4-Dinitrophenol	0.133	0.0718
4-Nitrophenol	0.133	0.0984
Phenol	0.133	0.0474
Endosulfan-Alpha	0.010	0.0018
Endosulfan-Beta	0.010	0.0018
Heptachlor	0.010	0.0018
N-nitrosodi-n-propylamine	0.000169	0.0000485
Hexachlorocyclopentadiene	0.00643	0.00241

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies to Aminocarb, Fenuron, Malathion, Methiocarb, Mexacarbate, Mirex, Monuron, Parathion Ethyl, Parathion Methyl, Propham, Propoxur, Trifluralin.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.127 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment sandards for new sources (PSNS).

SUBPART K

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.010	0.0018
Priority Pollutants: [3]		
2,4-Dinitrophenol	0.133	0.0718
4-Nitrophenol	0.133	0.0984
Phenol	0.133	0.0474
Endosulfan-Alpha	0.010	0.0018
Endosulfan-Beta	0.010	0.0018
Heptachlor	0.010	0.0018
N-nitrosodi-n-propylamine	0.000169	0.000485
Hexachlorocyclopentadiene	0.00643	0.00241

[1] All units are pounds per 1,000 lb (kg-kkg).
[2] Applies only to Aminocarb, Fenuron, Malathion, Methiocarb, Mexacarbate, Mirex, Monuron, Parathion Ethyl, Parathion Methyl, Propham, Propoxur, Trifluralin.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart L—Subcategory 9

§ 455.130 Applicability; description of Subcategory 9.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 9, which are as follows:

Azinphos methyl
BHC (Alpah, Beta, and Delta isomers)
Captan
Carbaryl
Chlorpropham
2,4-D
DCNA
DDD
DDE
DDT
Demeton-o
Demeton-s
Diazinon
Dicamba
Dicofol
Disulfoton
Diuron
Endrin
Fenuron-TCA
Heptachlor
Lindane (Gamma-BHC)
Linuron
Methoxychlor
Monuron-TCA
Neburon
PCNB
Perthane
Siduron
Silvex
SWEP
2,4,5-T
Toxaphene

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.131 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual divided by the number of operating days during that year. Production shall be determined for each plant based upon past production practices, present trends or committed growth.

§ 455.132 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

All active ingredients included in this subpart are covered under the previously promulgated BPT in Subpart A § 455.22.

§ 455.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.134 Effluent limitations 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).

SUBPART L

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Priority Pollutants: [2]		
Benzene	0.00278	0.000870
Chlorobenzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
Hexachlorocyclopentadiene	0.00325	0.00122
2,4-Dichlorophenol	0.0133	0.00718
2,4-Dinitrophenol	0.0133	0.00718
4-Nitrophenol	0.0133	0.00984
Pentachlorophenol	0.0133	0.00718
Phenol	0.0133	0.00474
1, 2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.135 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART L

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.010	0.0018
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Chlorobenzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
a-BHC-Alpha	0.010	0.0018
b-BHC-Beta	0.010	0.0018
d-BHC-Delta	0.010	0.0018
Endrin	0.010	0.0018
Heptachlor	0.010	0.0018
Lindane (g-BHC-Gamma)	0.010	0.0018
Toxaphene	0.010	0.0018
Hexachlorocyclo-pentadiene	0.00325	0.00122
2,4-Dichlorophenol	0.0133	0.00718
2,4-Dinitrophenol	0.0133	0.00718
4-Nitrophenol	0.0133	0.00984
Pentachlorophenol	0.0133	0.00718
Phenol	0.0133	0.00474
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944
COD	13.000	9.0000
BOD5	7.400	1,6000
TSS	6.100	1.8000
pH	(4)	(4)

[1] All units except pH are lbs/1,000 lbs (kg/kkg).
[2] Applies only to Azinphos Methyl, Captan, Carbaryl, Chlorpropham, 2,4-D, DCNA, Demeton-o, Demeton-s, Diazinon, Dicamba, Dicofol, Disulfoton, Diuron, Fenuron-TCA, Linuron, Methoxychlor, Monuron-TCA, Neburon, PCNB, Perthane, Siduron, Silvex, SWEP, 2,4,5-T.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4] Within the range of 6.0 to 9.0 at all times.

§ 455.136 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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

Pollutant or pollutant property	Pretreatment standards for existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants: [2]	0.010	0.0018
Priority Pollutants [3]	0.278	0.0870
Benzene	0.278	0.0870
Chlorobenzene	0.278	0.0781
Toluene	0.278	0.111
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl chloride	0.278	0.111
Methylene chloride	0.278	0.111
a-BHC-Alpha	0.010	0.0018
b-BHC-Beta	0.010	0.0018
d-BHC-Delta	0.010	0.0018
Endrin	0.010	0.0018
Heptachlor	0.010	0.0018
Lindane (g-BHC-Gamma)	0.010	0.0018
Toxaphene	0.010	0.0018
Hexachlorocyclopentadiene	0.00643	0.00241
2,4-Dichlorophenol	0.133	0.0718
2,4-Dinitrophenol	0.133	0.0718
4-Nitrophenol	0.133	0.0984
Pentachlorophenol	0.133	0.0718
Phenol	0.133	0.0474
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Azinphos Methyl, Captan, Carbaryl, Chlorpropham, 2,4-D, DCNA, Demeton-o, Demeton-s, Diazinon, Dicamba, Dicofol, Disulfoton, Diuron, Fenuron-TCA, Linuron, Methoxychlor, Monuron-TCA, Neburon, PCNB, Perthane, Siduron, Silvex, SWEP, 2,4,5-T.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.137 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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 L

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional: Pesticide Pollutants [2]	0.01	0.0018
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Chlorobenzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl chloride	0.278	0.111
Methylene chloride	0.278	0.111
a-BHC-Alpha	0.010	0.0018
b-BHC-Beta	0.010	0.0018

SUBPART L—Continued

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
d-BHC-Delta	0.010	0.0018
Endrin	0.010	0.0018
Heptachlor	0.010	0.0018
Lindane (g-BHC-Gamma)	0.010	0.0018
Toxaphene	0.010	0.0018
Hexachlorocyclo-pentadiene	0.00643	0.00241
2,4-Dichlorophenol	0.133	0.0718
2,4-Dinitrophenol	0.133	0.0718
4-Nitrophenol	0.133	0.0984
Pentachlorophenol	0.133	0.0718
Phenol	0.133	0.0474
1,2-dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944

[1] All units are pounds per 1,000 lbs (kg/kkg).
[2] Applies only to Azinphos Methyl, Captan, Carbaryl, Chlorpropham, 2,4-D, DCNA, Demeton-o, Demeton-s, Diazinon, Dicamba, Dicofol, Disulfoton, Diuron, Fenuron-TCA, Linuron, Methoxychlor, Monuron-TCA, Neburon, PCNB, Perthane, Siduron, Silvex, SWEP, 2,4,5-T.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see S445.160).

Subpart M—Subcategory 10

§ 455.140 Applicability; description of Subcategory 10.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 10, which are as follows:

Ametryne+
Anilazine+
Atrazine (Plants 11, 12)+
Cyanazine+
Metribuzin+
Prometon+
Prometryn+
Propazine+
Resmethrin+
Simazine+
Simetryne+
Terbuthylazine+
Terbutryn+

+Note.—Section 455.142 only applies to the active ingredient with this symbol. All other active ingredents are covered by the previously promulgated BPT in Subpart A § 455.22.

(b) The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.141 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR § 455.10(e) or below the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual divided number of operating days during that year. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (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 pollutant control technology (BPT).

SUBPART M

Pollutant or pollutant property	BPT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
pH	(2)	(2)

[1] All units except pH are pounds per 1,000 lbs (kg/kkg).
[2] Within the range of 6.0 to 9.0 at all times.

§ 455.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

§ 455.144 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR Sections 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 M

Pollutant or pollutant property	BAT effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [3]	0.439	0.0838
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Chlorobenzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl bromide	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944
Cyanide	0.00119	0.00244

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies only to Ametryne, Atrazine, (Plants 11 and 12), Cyanazine, Metribuzin, Prometon, Prometryn, Propazine, Simazine, Simetryne, Terbuthylazine, Terbutryn.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.145 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS).

SUBPART M

Pollutant or pollutant property	NSPS effluent limitations [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.439	0.0838
Priority Pollutants: [3]		
Benzene	0.00278	0.000870
Chlorobenzene	0.00278	0.000870
Toluene	0.00278	0.000781
Carbon tetrachloride	0.00278	0.00111
Chloroform	0.00278	0.00111
Methyl bromide	0.00278	0.00111
Methyl chloride	0.00278	0.00111
Methylene chloride	0.00278	0.00111
1,2-Dichloroethane	0.0278	0.00944
Tetrachloroethylene	0.0278	0.00944
Cyanide	0.00119	0.00244
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
pH	(4)	(4)

[1] All units except pH are lbs/1000 lbs (kg/kkg).
[2] Applies only to Ametryne, Atrazine, (Plants 11 and 12), Cyanazine, Metribuzin, Prometon, Prometryn, Propazine, Simazine, Simetryne, Terbuthylazine, Terbutryn.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).
[4] Within the range of 6.0 to 9.0 at all times.

§ 455.146 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that 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 M

Pollutant or pollutant property	Pretreatment standards and existing sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.519	0.0991
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Chlorobenzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl bromide	0.278	0.111
Methyl chloride	0.278	0.111
Methylene chloride	0.278	0.111
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944
Cyanide	0.00119	0.00244

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies only to Ametryne, Atrazine, (Plants 11 and 12), Cyanazine, Metribuzin, Prometon, Prometryn, Propazine, Simazine, Simetryne, Terbuthylazine, Terbutryn.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

§ 455.147 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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 M

Pollutant or pollutant property	Pretreatment standards for new sources [1]	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nonconventional Pesticide Pollutants [2]	0.519	0.0991
Priority Pollutants: [3]		
Benzene	0.278	0.0870
Chlorobenzene	0.278	0.0870
Toluene	0.278	0.0781
Carbon tetrachloride	0.278	0.111
Chloroform	0.278	0.111
Methyl bromide	0.278	0.111
Methyl chloride	0.278	0.111
Methylene chloride	0.278	0.111
1,2-Dichloroethane	0.278	0.0944
Tetrachloroethylene	0.278	0.0944
Cyanide	0.00119	0.00244

[1] All units are lbs/1000 lbs (kg/kkg).
[2] Applies only to Ametryne, Atrazine, (Plants 11 and 12), Cyanazine, Metribuzin, Prometon, Prometryn, Propazine, Simazine, Simetryne, Terbuthylazine, Terbutryn.
[3] Applies to all pesticide active ingredients in this subcategory, as necessary (see § 455.160).

Subpart N—Subcategory 11

§ 455.150 Applicability; description of Subcategory 11.

(a) The provisions of this subpart are applicable to discharges resulting from the manufacture of the pesticide active ingredients in Subcategory 11, which are as follows:

Alkylamine hydrochloride
Amobam
Barban
BBTAC
Biphenyl (Plant 13)
Chloropicrin (Plants 14, 15, 16)
2,4-D isooctyl ester (Plant 17)
2,4-D salt
Dichloroethyl ether
Dichlorophen salt
D-D
Dichloropropene
Dowicil 75
Ethoprop
Fluoroacetamide
Glyodin
HPTMS
Merphos
Metasol J-26
Pyrethrin
Silvex isooctyl ester
Silvex salt
Sodium monofluoroacetate (Plant 18)
Tributyltin benzoate
Tirbutyltin oxide (Plant 19)
Vancide 51Z
Vancide 51Z dispersion
Vancide TH
Ziram (Plant 20)

(b) The manufacture of the intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.151 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in 40 CFR 455.10(e) or below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) Production shall be defined as the annual divided by the number of operating days during that year. Production shall be determined for each plant based upon past production practices, present trends, or committed growth.

§ 455.152 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (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 pollutant control technology (BPT): There shall be no discharge of process wastewater pollutants in navigable waters. The limitations apply to all wastewaters from the manufacture of pesticide active ingredients listed in § 455.150 above.

§ 455.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional 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 control technology (BCT): The limitations are the same (no discharge of process wastewater) as those established under best practicable control technology currently available (40 CFR 455.152). The limitations apply to all wastewaters from the manufacture of pesticide active ingredients listed in § 455.150 above.

§ 455.154 Effluent limitations 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 in navigable waters. The limitations apply to all

wastewaters from the manufacture of pesticide active ingredients listed in § 455.150 above.

§ 455.155 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 in navigable waters. The limitation applies to all wastewaters from the manufacture of pesticide active ingredients listed in § 455.150 above.

§ 455.156 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any exisitng source subject to this subpart that 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). There shall be no discharge of process wastewater pollutants in navigable waters. The limitation applies to all wastewaters from the manufacturer of pesticide active ingredients listed in § 455.150 above.

§ 455.157 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart that 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. The limitations applies to all wastewaters from the manufacture of pesticide active ingredients listed in § 455.140 above.

Subpart O—Priority Pollutants Regulated

§ 455.160 Priority pollutants required to be regulated in pesticide active ingredient manufacturing wastewaters.

The following requirements are applicable to all subcategories in Part 455. Whenever a discharger manufactures a pesticide active ingredient listed in Column A that discharger must meet the effluent limitations and standards for the priority pollutants specified in Column C. Column B is included for informational purposes to indicate the priority pollutant group to which each of the specific priority pollutants belong.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
Acephate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Metals	Zinc.
	Volatile Aromatics	Benzene.
		Toluene.
Alachlor	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Aldicarb		None.
Alkylamine hydrochloride		None.
Allethrin	Volatile Aromatics	Benzene.
		Toluene.
Ametryne	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
Aminocarb	Phenols	Phenol.
Amobam		None.
Anilazine	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrochloroethylene.
	Cyanides	Cyanide.
	Volatile Aromatics	Chlorobenzene.
AOP*		None.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping)		
Aquatreat DNM 30	Metals	Zinc.
Aspon	Volatile Aromatics	Benzene.
		Toluene.
Atrazine	Cyanides	Cyanide.*
	Halomethanes	Carbon tetrachloride.*
		Chloroform.*
		Methyl chloride.*
		Methylene chloride.*
	Volatile Aromatics	Benzene.*
		Toluene.*
*Subcategory 10 only.		
Azinphos methyl	Chlorinated Ethanes and Ethylenes	1, 2-Dichloroethane.
		Tetrachloroethylene.
Barban		None.
BBTAC		None.
Bendiocarb		None.
Benfluralin*	Nitrosamines	N-nitrosodi-n-propylamine.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Benomyl		None.
Bensulide	Volatile Aromatics	Benzene.
		Toluene.
Bentazon	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
	Volatile Aromatics	Chlorobenzene.
Benzethonium chloride	Volatile Aromatics	Benzene.
		Toluene
Benzyl benzoate		None.
Benzyl bromoacetate	Volatile Aromatics	Benzene.
		Toluene.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
BHC	Pesticides	a-BHC-alpha.
		b-BHC-beta.
		r-BHC-delta.
		Lindane (g-BHC-gamma).
	Volatile Aromatics	Benzene.
		Toluene.
Bifenox	Halomethanes	Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	2,4-Dichlorophenol.
Biphenyl		None.
Bolstar	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachlorethylene.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	2,4-Dichlorophenol.
Bromacil	Halomethanes	Phenol
		Carbon tetrachloride.
		Chloroform.
		Methylene chloride.
Bromoxynil	Volatile Aromatics	Benzene.
		Toluene.
Bromoxynil octanoate	Volatile Aromatics	Benzene.
		Toluene.
Busan 40		None.
Busan 85		None.
Busan 90	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	Phenol.
Butachlor	Volatile Aromatics	Benzene.
		Toluene.
Butylate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Captafol		None.
Captan*		None.

*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).

Carbam-S		None.
Carbaryl	Volatile Aromatics	Benzene.
		Toluene.
Carbendazim*		None.

*Presence of nonconventionbal polutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).

Carbofuran		None.
Carbophenothion	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Toluene.
CDN	Volatile Aromatics	Benzene.
		Toluene.
Chloramben*		None.

*Presence of nonconventionbal polutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).

Chlordane	Dienes	Hexachlorocyclopentadiene.
	Pesticides	Heptachlor.
Chlorobenzene	Phenols	2,4-Dichlorophenol.
		Pentachlorophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Chlorobenzilate	Volatile Aromatics	Benzene.
		Toluene.
Chlorophacinone	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
	Halomethanes	Methyl bromide.
Chloropicrin		None.
Chlorothalonil	Chlorinatedethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
	Cyanides	Cyanide.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Chlorpropham	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
Chlorpyrifos	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Chlorpyrifos methyl	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Coumachlor		None.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
Coumafuryl		None.
Coumaphos		None.
Coumatetralyl		None.
Cyanazine*	Cyanides	Cyanide.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
Cycloate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Cycloheximide	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Cycloprate	Volatile Aromatics	Benzene.
		Toluene.
Cyhexatin	Volatile Aromatics	Benzene.
		Toluene.
Cythioate	Volatile Aromatics	Benzene.
		Toluene.
2,4-D	Phenols	2,4-Dichlorophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
2,4-D isobutyl ester*		None.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
2,4-D isooctyl ester*		None.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
2,4-D salt		None.
Dalapon		None.
Dazomet		None.
2,4-DB	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	2,4-Dichlorophenol.
		Phenol.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
2,4-DB isooctyl ester*		None.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
DBCP		None.
DCNA*		None.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
DCPA	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
D-D		None.
DDD	Volatile Aromatics	Benzene.
		Chlorobenzene.
DDE	Volatile Aromatics	Benzene.
		Chlorobenzene.
DDT	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Deet	Volatile Aromatics	Benzene.
		Toluene.
Demeton	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Toluene.
Demeton-o	Volatile Aromatics	Benzene.
		Toluene.
Demeton-s	Volatile Aromatics	Benzene.
		Toluene.
Diazinon	Volatile Aromatics	Benzene.
		Toluene.
Dicamba	Halomethanes	Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	2,4-Dichlorophenol.
		Pentachlorophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Dichlofenthion*	Phenols	2,4-Dichlorophenol.
		Pentachlorophenol.
* Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Dichlorobenzene, ortho	Volatile Aromatics	Benzene.
		Chlorobenzene.
		1,2-Dichlorobenzene.
		Toluene.
Dichlorobenzene, para	Volatile Aromatics	Benzene.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
		Chlorobenzene.
		1,4-Dichlorobenzene.
		Toluene.
Dichloroethyl ether		None.
Dichlorophen*	Phenols	Phenol.
* Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Dichlorophen salt		None.
Dichloropropene	Dichloropropane and Dichloropropene	1,3-Dichloropropene.
Dichlorprop*		None.
* Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Dichlorvos		None.
Dicofol	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
Dienochlor	Dienes	Hexachlorocyclopentadiene.
	Metals	Copper.
	Volatile Aromatics	Benzene.
		Toluene.
Dimethoxane		None.
Dinocap	Phenols	2,4-Dinitrophenol.
		Phenol.
Dinoseb		None.
Dioxathion		None.
Diphacinone		None.
Diphenamid	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
Diphenylamine*		None.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Disulfoton	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
	Volatile Aromatics	Benzene.
Diuron	Volatile Aromatics	Toluene.
		Benzene.
		Chlorobenzene.
Dodine	Cyanides	Toluene.
Dowicil 75		Cyanide.
Endosulfan	Dienes	None.
	Pesticides	Hexachlorocyclopentadiene.
		a-Endosulfan-alpha.
Endothall		b-Endosulfan-beta.
Endrin	Chlorinated Ethanes and Ethylenes	None.
		1,2-Dichloroethane.
	Dienes	Tetrachloroethylene.
	Halomethanes	Hexachlorocyclopentadiene.
		Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Pesticides	Endrin.
EPN	Nitrosamines	N-nitrosodi-n-propylamine.
	Phenols	4-Nitrophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
EPTC	Halomethanes	Toluene.
		Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Ethalfluralin*	Nitrosamines	N-nitrosodi-n-propylamine.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Ethion	Halomethanes	Methyl bromide.
	Volatile Aromatics	Benzene.
		Toluene.
Ethoprop		None.
Ethoxyquin 66%	Volatile Aromatic	Toluene.
Ethoxyquin 86%	Volatile Aromatic	Toluene.
Ethylene dibromide		None.
Etridazole	Volatile Aromatic	Benzene.
EXD		None.
Famphur	Volatile Aromatics	Benzene.
		Toluene.
Fenarimol		None.
Fenitrothion	Cyanides	Cyanide.
	Metals	Copper.
	Volatile Aromatics	Benzene.
		Toluene.
Fensulfothion	Metals	Copper.
	Volatile Aromatics	Benzene.
		Toluene.
Fenthion	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methylene chloride.
	Phenols	Phenol.
Fentin hydroxide	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Fenuron		None.
Fenuron-TCA	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
Ferbam		None.
Fluchloralin*	Nitrosamines	N-nitrosodi-n-propylamine.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Fluoridone	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Toluene.
Fluometuron*	Cyanides	Cyanide.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Fluoroacetamide		None.
Folpet		None.
Fonofos	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
	Volatile Armoatics	Benzene.
		Toluene.
Giv-gard	Nitrosamines	N-nitrosodi-n-propylamine.
	Volatile Aromatics	Benezene.
		Toluene.
Glyodin		None.
Glyphosate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
HAE		None.
HAMP		None.
Heptachlor	Chlorinated Ethanes and Ethylenes	1,2-Dicholoroethane.
		Tetrachloroethylene.
	Dienes	Hexachlorocyclopentadiene.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Pesticides	Heptachlor.
Hexachlorophene	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
	Phenols	Pentachlorophenol.
Hexazinone	Volatile Aromatics	Benezene.
		Toluene.
HPTMS		None.
Hyamine 2389	Volatile Aromatics	Benezene.
		Toluene.
Hyamine 3500	Volatile Aromatics	Toluene.
Isopropalin	Nitrosamines	N-nitrosodi-n-propylamine.
Kathon 886	Volatile Aromatics	Benezene.
		Toluene.
Kinoprene*		None.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
KN methyl		None.
Lethane 384	Cyanides	Cyanide.
	Volatile Aromatics	Benezene.
		Toluene.
Lindane	Pesticides	a-BHC-Alpha.
		b-BHC-Beta.
		r-BHC-delta.
		Lindane (g-BHC-gamma).
	Volatile Aromatics	Benezene.
		Toluene.
Linuron	Volatile Aromatics	Benezene.
		Chlorobenezene.
Malathion		None.
Maleic hydrazide		None.
Mancozeb	Metals	Zinc.
Maneb	Metals	Zinc.
MCPA	Phenols	2,4-Dichlorophenol.
		Phenol.
	Volatile Aromatics	Benezene.
		Toluene.
MCPA isoctyl ester*		None.
*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).		
MCPP	Phenols	2,4-Dichlorophenol.
		Phenol.
	Volatile Aromatics	Benezene.
		Toluene.
Mephosfolan	Volatile Aromatics	Benezene.
		Toluene.
Merphos		None.
Metasol DGH	Cyanides	Cyanide.
Metasol J-26		None.
Metham		None.
Methamidophos	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
Methiocarb	Phenols	Phenol.
Methomyl	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Methoprene		None.
Methoxychlor	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	Phenol.
Methylbenzethonium chloride	Volatile Aromatics	Benzene.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
		Toluene.
Methyl bromide	Halomethanes	Methyl bromide.
Methylene bisthiocyanate	Cyanides	Cyanide.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Metribuzin	Cyanides	Cyanide.
	Halomethanes	Methyl bromide.
Mevinphos		None.
Mexacarbate	Phenols	Phenol.
MGK 264	Volatile Aromatics	Benzene.
		Toluene.
MGK 326	Volatile Aromatics	Benzene.
		Toluene.
Mirex	Dienes	Hexachlorocyclopentadiene.
Molinate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Monocrotophos	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Metals	Copper.
Monuron		None.
Monuron-TCA	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
	Volatile Aromatics	Benzene.
		Toluene.
Nabam*		None.

*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).

Nabonate	Cyanides	Cyanide.
Naled	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
1,8-Napthalic anhydride		None.
Napropamide	Volatile Aromatics	Benzene.
		Toluene.
Naptalam	Volatile Aromatics	Benzene.
		Toluene.
Neburon	Volatile Aromatics	Benzene.
		Toluene.
Niacide		None.
Nitrofen	Phenols	2,4-Dichlorophenol.
		4-Nitrophenol.
		Pentachlorophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
NMI	Volatile Aromatics	Benzene.
		Toluene.
Norflurazon		None.
Octhilinone		None.
Oryzalin	Nitrosamines	N-nitrosodi-n-propylamine.
Oxamyl		None.
Oxydemeton	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Oxyfluorfen	Chlorinated Ethanes and Ethylenes	1,2-Dichlorethane.
		Tetrachloroethylene.
Paraquat	Halomethanes	Chloroform.
		Methyl chloride.
		Methylene chloride.
Parathion ethyl	Phenols	4-Nitrophenol.
Parathion methyl	Phenols	2,4-Dinitrophenol.
		4-Nitrophenol.
PBED	Chlorinated Ethanes and Ethylenes	1,2-dichloroethane.
PCNB	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
PCP	Phenols	2,4-Dichlorophenol.
		Pentachlorophenol.
		Phenol.
	Volatile Aromatics	Chlorobenzene.
PCP salt		None.
Pebulate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Metals	Zinc.
Permethrin		None.
Perthane	Chlorinated Ethanes and Ethylenes	1,2-Dichlorethane.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Phenylphenol	Phenols	2,4-Dichlorophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
Phenylphenol sodium salt	Phenols	2,4-Dichlorophenol.
		Phenol.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
	Volatile Aromatics	Benzene.
		Chlorobenzene.
Phorate		None.
Phosfolan	Volatile Aromatics	Benzene.
		Toluene.
Phosmet	Volatile Aromatics	Benzene.
		Toluene.
Picloram	Cyanides	Cyanide.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Pindone	Volatile Aromatics	Benzene.
		Toluene.
Piperalin	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Piperonyl butoxide		None.
Polyphase antimildew		None.
Profluralin	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Nitrosamines	N-nitrosodi-n-propylamine.
Prometon	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
Prometryn	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
Pronamide	Volatile Aromatics	Benzene.
		Toluene.
Propachlor	Volatile Aromatics	Benzene.
		Toluene.
Propanil	Volatile Aromatics	Benzene.
		Toluene.
Propargite		None.
Propazine	Cyanides	Cyanide.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Toluene.
Propham		None.
Propionic acid		None.
Propoxur	Phenols	Phenol.
Pyrethrins		None.
8 Quinolinol citrate		None.
8 Quinolinol sulfate		None.
Qinomethionate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Resmethrin	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
RH-787*		None.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Ronnel*	Phenols	2,4-Dichlorophenol.
*Pesticide wastewater to be monitored for volatile compound as yet to be designated.		
Rotenone	Volatile Aromatics	Benzene.
		Toluene.
Siduron	Volatile Aromatics	Chlorobenzene.
Silvex	Phenols	2,4-Dichlorophenol.
		Phenol.
	Volatile Aromatics	Benzene.
		Toluene.
Silvex isooctyl ester		None.
Silvex salt		None.
Simazine	Cyanides	Cyanide.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Benzene.
		Toluene.
Simetryne	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
Sodium monofluoroacetate		None.
Stirofos	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
		Tetrachloroethylene.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Volatile Aromatics	Chlorobenzene.
Sulfallate		None.
Sulfoxide	Volatile Aromatics	Benzene.
		Toluene.
SWEP	Volatile Aromatics	Benzene.

Col. A—Pesticide	Col. B—Priority pollutant group	Col. C—Priority pollutant regulated
2,4,5-T	Phenols	Toluene.
		Phenol.
		2,4-Dichlorophenol.
	Volatile Aromatics	Benzene.
		Toluene.
TCMTB	Cyanides	Cyanide.
	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Metals	Copper.
Tebuthiuron		None.
Temephos	Chlorinated Ethanes and Ethylenes	1,2-Dichloroethane.
Terbacil		None.
Terbufos		None.
Terbuthylazine	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
Terbutryn	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
		Toluene.
Thiabendazole	Cyanides	Cyanide.
	Volatile Aromatics	Benzene.
Thiofanox*		None.

*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).

Thionazine		None.
Tokuthion	Phenols	2,4-Dichlorophenol.
	Volatile Aromatics	Benzene.
		Toluene.
Toxaphene	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Pesticides	Toxaphene.
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		Toluene.
Triadimefon	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
	Phenols	2,4-Dichlorophenol.
		Pentachlorophenol.
	Volatile Aromatics	Benzene.
		Toluene.
Tributyltin benzoate		None.
Tributyltin fluoride		None.
Tributyltin oxide	Volatile Aromatics	Benzene.*
		Toluene.*

*Subcategory 2 only.

Trichlorobenzene	Pesticides	a-BHC-alpha.
		b-BHC-beta.
		r-BHC-delta.
		Lindane (g-BHC-gamma).
	Volatile Aromatics	Benzene.
		Chlorobenzene.
		1,2,4-Trichlorobenzene.
		Toluene.
Trichloronate	Phenols	2,4-Dichlorophenol.
	Volatile Aromatics	Phenol.
		Benzene.
		Toluene.
Tricyclazole		None.
Trifluralin	Nitrosamines	N-nitrosodi-n-propylamine.
Vancide TH		None.
Vancide 51Z		None.
Vancide 51Z dispersion		None.
Vancide PA		None.
Vernolate	Halomethanes	Carbon tetrachloride.
		Chloroform.
		Methyl chloride.
		Methylene chloride.
Warfarin		None.
ZAC*	Metals	Zinc.

*Presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping).

Zineb*	Metals	Zinc.

*For Subcategory 5 only, presence of nonconventional pollutant ammonia determined that this pesticide be placed in a subcategory with volatile compounds which require similar treatment (stripping)

Ziram	Metals	Zinc.**

**Subcategory 3 only.

[FR Doc. 82-31273 Filed 11-29-82; 8:45 am]

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federal register

Tuesday
November 30, 1982

Part III

Environmental Protection Agency

Proposed Revision of the Pennsylvania State Implementation Plan

Part III

Environmental Protection Agency

Proposed Revision of the Pennsylvania State Implementation Plan

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-2231-7; AW034PA]

Proposed Revision of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice proposes the approval of an alternative emission reduction plan (bubble) for the Bethlehem Steel Corporation plant in Bethlehem, Pennsylvania. The bubble allows increased particulate matter emissions from the sinter plant windboxes to be offset by reducing emissions from two other sinter plant emission sources, resulting in a net reduction in emissions. On June 8, 1982, the Pennsylvania Department of Environmental Resources (PA DER) requested that EPA propose approval of this bubble.

DATE: Comments must be submitted on or before December 30, 1982.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following locations:

U.S. EPA, Air Programs & Energy Branch, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106, ATTN: David Arnold (3AW11)

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, ATTN: Gary L. Triplett

All comments on the proposed revision submitted on or before (30 days from publication date) will be considered and should be sent to: Mr. David L. Arnold, Acting Chief, Pennsylvania Section (3AW11), Air & Waste Management Division, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory D. Ham at the address listed above, or at (215) 597-2745.

SUPPLEMENTARY INFORMATION: The proposed changes to the Pennsylvania State Implementation Plan (SIP) were submitted by Secretary Peter S. Duncan, PaDER, on June 8, 1982. A public hearing on this bubble was held on June 17, 1982 in Norristown, Pennsylvania. DER and EPA are processing this proposal concurrently. All comments received by the PaDER at the public hearing in Norristown, PA, and any written comments received by EPA, will be considered by EPA in making a final determination on the approvability of the plan.

The bubble being proposed today for the Bethlehem Steel Corporation plan in Bethlehem, PA., would allow the particulate matter emissions from two electrostatic precipitators (ESP's) controlling sinter plant windbox emissions to exceed the currently applicable regulations. The increase in emissions would be offset by improving the control efficiency of two baghouses which control emissions from the sinter machine discharge and the cold sinter screen. The resulting net emissions would be less than that allowed under current regulations.

Current regulations (§ 123.13(b) of the Pennsylvania's Air Resources Regulations) for the windbox allow emissions of 38 lbs./hour each. Limits for the baghouses are 12 lbs./hour for the cold sinter screen baghouse and 51 lbs./hour on the baghouse for the sinter machine discharge. Therefore, the total emissions are 139 lbs./hour. The limits being proposed today (as § 128.20 of the Air Resources Regulations) are 60 lbs./hour for each ESP, 10 lbs./hour for the sinter machine discharge baghouse, and 6 lbs./hour from the cold sinter screen baghouse. In addition, concentration limits are set at 0.035 gr/dscf, 0.006 gr/dscf, and 0.020 gr/dscf respectively. The total emissions from the four sources will be 136 lbs./hr, resulting in a net decrease of 3 lbs./hr. The relevant emission sources are located in the same immediate vicinity, and no increases in emissions will occur at the sources with the lower effective plume heights. Therefore, in accordance with EPA's Emission Trading Policy of April 7, 1982 (47 FR 15076), no modeling was required.

EPA has reviewed the proposed bubble according to the proposed Emissions Trading Policy of April 7, 1982 (47 FR 15076), and is today proposing approval of this bubble.

The public is invited to submit, to the address stated above, comments on whether the proposed changes should be approved as a SIP revision. The Administrator's decision to approve or disapprove the proposed revision will be based in part on the comments received.

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

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

(42 U.S.C. 7401-7642)

Dated: September 30, 1982.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 82-32710 Filed 11-29-82; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

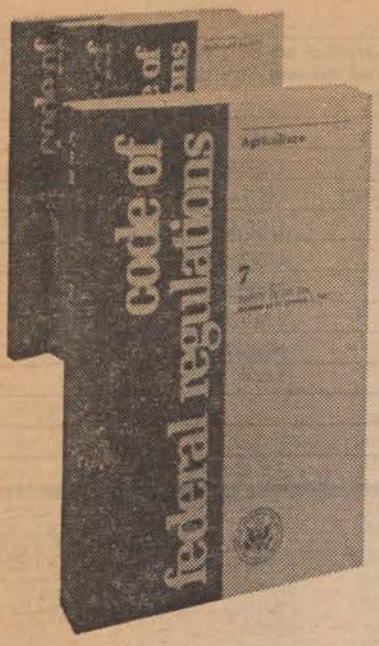
The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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