

federal register

Thursday
December 29, 1983

Selected Subjects

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Consumer Product Safety Commission

Air Pollution Control

Environmental Protection Agency

Animal Drugs

Food and Drug Administration

Aviation Safety

Federal Aviation Administration

Employment Taxes

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Endangered and Threatened Wildlife

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Fisheries

National Oceanic and Atmospheric Administration

Flood Insurance

Federal Emergency Management Agency

Food Ingredients

Food and Drug Administration

Government Property Management

General Services Administration

Grain

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 225, and 226

Vegetable Protein Products Used in Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Delay of implementation date.

SUMMARY: This announces a delay in implementation of final regulations for vegetable protein products used in the Child Nutrition Programs published on January 7, 1983 (48 FR 775). The final rule authorized in program regulations the use of vegetable protein products as an alternate food in the Child Nutrition Programs and superseded FNS Notice 219. The rule established naming and nutritional requirements for vegetable protein products and terms and conditions for their use in Child Nutrition Programs. To provide manufacturers and food service authorities with time to comply with these regulations, the final rule allowed for a one year implementation period following the February 7, 1983, effective date. During this one year period, vegetable protein products used as an alternate food in the Child Nutrition Programs could meet all the requirements of either FNS Notice 219 or all of the new requirements set forth in the final rule. Then at the end of the implementation period, February 7, 1984, vegetable protein products used as an alternate food in the Child Nutrition Programs would have to meet the requirements set forth in the final rule. The Department is now delaying the February 7, 1984, implementation date in order to allow manufacturers and food service authorities additional time to make product formulation changes and

to coincide these changes with other revisions that may need to be made when revised guidance materials are published.

DATES: Effective January 30, 1984. The mandatory implementation date for the final regulations published at 48 FR 775, January 7, 1983, under the title "Vegetable Protein Products Used in Child Nutrition Programs", is delayed until September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Ford, Branch Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3556.

SUPPLEMENTARY INFORMATION:

Classification

Robert E. Leard, Administrator of the Food and Nutrition Service, has determined pursuant to 5 U.S.C. 553(b) that good cause exists for making this notice effective without benefit of public comments. This notice is being issued to allow manufacturers and food service authorities the option of reformulating products to meet the new vegetable protein product regulation at this time or to delay reformulation of products to coincide with additional changes which may be necessary when revised guidance materials are published. Therefore, with the original February 7, 1984, implementation date drawing closer, solicitation of public comments is unnecessary and contrary to the public interest.

In February of 1971, the Department issued FNS Notice 219 which permitted the use of hydrated textured vegetable protein products as an alternate food to provide up to 30 percent (uncooked basis) of meat, poultry, or seafood used to meet the meat/meat alternate requirement of meal patterns for the various Child Nutrition Programs. The Department permitted the use of these products because they were nutritious, helped food service directors to cope with the high cost of meats, and helped to provide more flexibility in menu planning.

The Department designed the nutrient specifications for textured vegetable protein products outlined in FNS Notice 219 to be nutritionally equivalent to raw ground beef containing no more than 50 percent protein and when hydrated have

a maximum moisture content of 65 percent. FNS Notice 219 was clearly designed around soy flour which was the vegetable protein product available at that time. Other vegetable protein products were still in the initial stages of development.

Due to recent advances in food technology, several new types of vegetable protein products have been developed and made available—isolates and concentrates. On January 7, 1983, a final rule was published which allowed other choices than those described by FNS Notice 219 in the types of vegetable protein products used. Manufacturers and food service authorities were given one year to implement this rule and formulate products in accordance with the requirements set forth in it. As the February 7, 1984, deadline draws closer, there is concern about manufacturers and food service authorities reformulating products to meet the new vegetable protein product regulations when additional changes in formulations may be necessary to comply with revised guidance materials to be published. Currently, the Department is in the process of revising the *Food Buying Guide for School Food Service* and changes may be made in yield data for some meat/meat alternate items. Therefore, the Department is delaying the implementation date for the vegetable protein product regulations until September 1, 1984, so that manufacturers and food service authorities may coincide changes in product formulations to comply with these regulations and any revisions that may appear in the Food Buying Guide. Until September 1, 1984, vegetable protein products used as an alternate food in the Child Nutrition Programs may meet all the requirements of either FNS Notice 219 or all of the new requirements presented in the January 7, 1983 final rule.

(National School Lunch Act, Sections 9, 13, 17, 72; U.S.C. 1758, 1761, 1766; 7 CFR 210.10, 225.10, 226.21)

Dated December 20, 1983.

Robert E. Leard,
Administrator.

[FR Doc. 83-34547 Filed 12-28-83; 8:48 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service**7 CFR Part 907**

[Navel Orange Reg. 586]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 30, 1983—January 5, 1984. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: December 30, 1983.**FOR FURTHER INFORMATION CONTACT:** William J. Doyle, 202-447-5975.**SUPPLEMENTARY INFORMATION:****Findings**

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

This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1983-84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on December 20, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the Act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

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

PART 907—[AMENDED]

Section 907.886 is added as follows:

§ 907.886 Navel Orange Regulation 586.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 30, 1983 through January 5, 1984, are established as follows:

- (a) District 1: 800,000 cartons;
- (b) District 2: 27 cartons;
- (c) District 3: Unlimited cartons;
- (d) District 4: Unlimited cartons.

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

Dated: December 23, 1983.

Russell L. Hawes,*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

(FR Doc. 83-34614 Filed 12-28-83; 8:45 am)

BILLING CODE 3410-02-M**7 CFR Part 993****Dried Prunes Produced in California; Changes in the Time for Filing Reports and Conforming Changes****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule revises § 993.172 (b) and (d) and of the Administrative Rules and Regulations issued under the marketing order for California dried prunes to change the time requirements for handlers to file the monthly "New Crop Supply and Inbound Prune Report" and the "Report of Shipments." This change will enable the Prune Marketing Committee (PMC) staff to prepare and release its

statistical data on supply and shipments sooner each month, thereby better meeting the needs of the prune industry.

In addition, minor conforming changes are made in the Administrative Rules and Regulations to reflect the change in the name of the Prune Administrative Committee to Prune Marketing Committee. This change was made when the marketing order was amended in December 1981.

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

EFFECTIVE DATE: January 30, 1984.**FOR FURTHER INFORMATION CONTACT:**

Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the September 19, 1983, issue of the *Federal Register* (48 FR 41775), and interested persons were afforded an opportunity to submit written comments until November 18, 1983. Three comments were received from handlers—two in opposition to the changes and one in favor.

This action amends Subpart—Administrative Rules and Regulations (7 CFR 993.101-993.174) to change form filing deadline dates and to make minor conforming changes. This subpart is issued under the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of California dried prunes. The marketing agreement and order are collectively referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal is based on a recommendation of the PMC.

Currently, § 993.172(b) requires handlers to file with the PMC for each month, prior to the 10th calendar day of the next succeeding month, a signed report on Form PMC 11.1, "New Crop

Supply and Inbound Prune Report." Similarly, § 993.172(d) requires handlers to file with the PMC for each month, prior to the 10th calendar day of the next succeeding month, a signed report on Form PMC 12.1, "Report of Shipments". This final rule revises § 993.172 (b) and (d) to require that these reports be filed by the 5th working day of the next succeeding month. In many cases, this date would be only 2 or 3 days earlier than the 10th calendar day because of weekends.

These date changes will enable the PMC staff to prepare its monthly reports on supply and shipments sooner than they can under the current provisions and make this information available to the industry sooner each month. Both reports are authorized under § 993.72 of the order.

The commentators in opposition to the deadline date changes indicated that they had higher priority duties to perform and it would be difficult or impossible for them to meet the earlier deadlines. However, while the earlier deadlines may place a burden on some handlers, the evidence indicates that the benefits of the earlier deadlines to the industry will outweigh the disadvantages. As indicated by the commentator in favor of the proposal, more timely data on supplies and shipments should enable handlers to make quicker and better informed decisions in the marketplace. Prompt decisionmaking is essential in the marketplace if the industry is to maximize prune shipments.

In addition, minor conforming changes in the Administrative Rules and Regulations are made to reflect a change in the name of the Committee from the Prune Administrative Committee to the Prune Marketing Committee. This change was made when the order was amended on December 18, 1981 (46 FR 61635).

After consideration of all relevant matter presented, including that in the notice, the Committee's recommendation, the comments received, and other available information, it is found that to amend Subpart—Administrative Rules and Regulations (7 CFR 993.101–993.174) will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 993

Marketing agreements and orders, Plums and Prunes, and California.

PART 993—[AMENDED]

Therefore, Subpart—Administrative Rules and Regulations (7 CFR 993.101–993.174) is amended as follows:

§ 993.172 [Amended]

1. Section 993.172(b) is amended by changing the phrase "prior to the 10th calendar day" to "prior to the 5th working day," and by changing the phrase "Form PAC" to "Form PMC."

2. The introductory paragraph of § 993.172(d) is revised to read as follows:

(d) *Shipments by handlers.* Each handler shall file with the Committee for each month, prior to the 5th working day of the next succeeding month, a signed report on Form PMC 12.1, "Reports of Shipments," reporting shipments of prunes during the crop year through the last day of the immediately preceding month. Such report shall contain at least the following information:

§ 993.102 [Amended]

3. A conforming change in § 993.102 is made by changing the phrase "Prune Administrative Committee" to "Prune Marketing Committee."

§§ 993.149–993.174 [Amended]

4. Conforming changes are made in § 993.149–993.174 by changing the phrase "Form PAC" to "Form PMC" wherever it appears in those sections.

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

Dated: December 22, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-34489 Filed 12-28-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1004

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to manufacturing plants and still be priced under the Middle Atlantic milk order. The suspension applies during the period of December 1983 through February 1984. The action was requested by a cooperative association to assure the efficient disposition of milk not needed for fluid use and to maintain status under the order for its dairy farmer members regularly associated with the market.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Issued December 1, 1983; published December 6, 1983 (48 FR 54638).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the Federal Register on December 6, 1983 (48 FR 45638) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. No comments were received opposing the suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of December 1983 through February 1984 the following provisions of the order do not trend to effectuate the declared policy of the Act:

In § 1004.12, paragraph (d)(2).

Statement of Consideration

This section makes inoperative for December 1983 through February 1984 the provisions of the Middle Atlantic Federal milk order that limit the amount of milk that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The order now provides that during any month of September through February a handler may divert not more than 18 days' production of each producer or that the total quantity of producer milk does not exceed 40 percent of the amount of milk for which the cooperative or pool plant operator is the handler during the month.

The suspension was requested by Inter-State Milk Producers' Cooperative (Inter-State) that supplies a substantial part of the market's fluid milk needs and handles a large share of the market's reserve milk supplies. In addition, comments received from two other cooperative associations representing members whose milk is pooled under the Middle Atlantic Federal milk order supported the suspension.

The suspension is necessary because of the likely change from pool status to nonpool status of three distributing plants, which Inter-State supplies, that have been associated with the market for a long time. These plants, which are outlets for a significant proportion of Inter-State's milk supply, have increased their Class II uses of milk while their Class I sales have remained constant or declined. The cooperative states that under this situation, any of these plants could in any given month fail to qualify as a pool plant under the order. The cooperative indicates that any change in the regulatory status of the plants will reduce the basis of its diversion allowances since the order's allowable diversions are based upon the receipts of milk at pool plants. Consequently, this would increase Inter-State's diversions above the limits prescribed in the order.

The cooperative requesting the suspension indicated that a more permanent regulatory solution to the pooling problem should be formulated based on the record of a public hearing. The cooperative stated that it is considering appropriate proposed amendments to the order which would accommodate present marketing conditions.

In view of the circumstances, the aforesaid provisions should be suspended for the period of December 1983 through February 1984, pending a hearing at which proposals to amend the order may be considered. The suspension also will avoid the threatened loss of producer status for dairy farmers historically associated with the Middle Atlantic market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without this action the milk of producers historically associated with the Middle Atlantic market may fail to share in the marketwide pool;

(b) This suspension does not require of persons affected substantial or

extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy Products.

It is therefore ordered, That the aforesaid provisions in § 1004.12(d)(2) of the order are hereby suspended for the period of December 1983 through February 1984.

Effective Date: December 29, 1983.

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

Signed at Washington, D.C., on December 23, 1983.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 83-34486 Filed 12-26-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 23 and 31

[Docket No. 83-58]

Extensions of Credit to National Bank Insiders

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is amending its regulations concerning reports and disclosure of national bank ownership and insider indebtedness owed to national banks and their correspondent banks. This rule implements the amendments to Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 contained in Title IV of the Garn-St Germain Depository Institutions Act of 1982. The rule requires a national bank to disclose, upon request by any person, the names of its executive officers and principal shareholders who have substantial borrowings from the bank or its correspondent banks.

EFFECTIVE DATE: This amendment is effective December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Peggy Shriner, National Bank Examiner,

Commercial Examinations Division (202) 447-1165, or Duff Jordan or Chari Anhouse, Attorneys, Legal Advisory Services Division (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

(a) *12 U.S.C. 1817(k)*. Prior to the enactment of the Garn-St Germain Depository Institutions Act of 1982 [Pub. L. 97-320, 96 Stat. 1469] ("Garn-St Germain Act"), 12 U.S.C. 1817(k) required each insured bank to make to the appropriate Federal banking agency an annual report containing information with respect to the preceding calendar year as follows:

(A) A list by name of each stockholder of record who directly or indirectly owns, controls or has the power to vote more than 10 per centum of any class of voting securities of the bank.

(B) A list by name of each executive officer or stockholder of record who directly or indirectly owns, controls or has the power to vote more than 10 per centum of any class of voting securities of the bank and the aggregate amount of all extensions of credit by such bank during such year to: (i) Such executive officers or stockholders of record, (ii) any company controlled by such executive officers, or stockholders, or (iii) any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

This statute also required the bank or the agency to make the information available, upon request, to the public (12 U.S.C. 1817(k)(4)). In implementing this provision, Regulation O required member banks to file the required report with the appropriate Federal banking agency on or before March 31 of each year (12 CFR 215.10(b)). This information has been provided on FFIEC Form No. 003.

Section 429 of the Garn-St Germain Act replaced the text of 12 U.S.C. 1817(k) with a provision authorizing the appropriate Federal banking agencies to issue rules and regulations to require the reporting and public disclosure of information concerning extensions of credit to executive officers and principal shareholders, or the related interests of such persons. The Act provided, however, that the former provisions of 1817(k) would remain in effect until such new regulations become effective.

(b) *12 U.S.C. 1972(2)(G)*. The Garn-St Germain Act deleted subparagraphs (ii) and (iii) of 12 U.S.C. 1972(2)(G).

Subparagraph (ii) required each insured bank to compile and send to its appropriate regulatory agency the following information regarding loans from correspondent banks to the insured bank's executive officers and to those of its stockholders of record who directly or indirectly owned, controlled, or had the power to vote more than 10 per centum of any class of the insider bank's voting securities:

(1) The maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(2) The amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(3) The range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(4) The terms and conditions of such indebtedness of such executive officer or stockholder of record.

The information to be forwarded to the appropriate agency constituted compilations of reports which the executive officers or the stockholders in question are required to make, on FFIEC Form No. 004, to the bank's board of directors pursuant to 12 U.S.C. 1972(2)(G)(i). The implementing Regulation O requires that this information be reported to the appropriate agency on or before March 31 of each year. 12 CFR 215.23.

Subparagraph (iii) of 12 U.S.C. 1972(2)(G) required each insured bank to include in the report to be made under 12 U.S.C. 1817(k) the names of executive officers or principal shareholders who submit information required under 12 U.S.C. 1972(2)(G)(i), and the aggregate amount of loans by correspondent banks to such insiders or to companies controlled by them, or to political or campaign committees benefitting, or controlled by, such insiders. This information was therefore subject to the disclosure provisions of 12 U.S.C. 1817(k)(4).

In deleting subparagraphs (ii) and (iii), Section 428 of the Garn-St Germain Act

authorized the appropriate Federal banking agencies to issue rules and regulations to require a bank or the executive officers or principal shareholders thereof to report, and make public, information regarding loans by correspondent banks to such insiders or their related interests. Again, this statute provides that existing requirements remain in effect until the new regulations become effective.

FFIEC Action

On June 29, 1983, the Federal Financial Institutions Examination Council ("FFIEC") announced its approval of the new Commercial Bank Report of Condition and Income that is to become effective with the filing of the March 31, 1984, reports. In this context, the FFIEC decided to take the following actions regarding the reporting and public disclosure of insider loans by commercial banks and mutual savings banks:

- Eliminate the requirement that banks annually file Form FFIEC 003, "Report on Ownership of the Reporting Bank and Indebtedness of Its Executive Officers and Principal Shareholders to the Reporting Bank and to Its Correspondent Bank";

- Require banks to report quarterly, beginning with the December 31, 1983, Report of Condition, the total amount of extensions of credit by the reporting bank to all of its executive officers and principal shareholders and to their related interests, and the number of these persons having significant amounts of such loans outstanding;

- Continue to recommend to reporting banks that they use a specific FFIEC form to get information about the debts of their executive officers and principal shareholders, and their related interests, to correspondent banks (FFIEC Form No. 004); and

- Recommend to the three Federal bank regulatory agencies that they adopt, by December 31, 1983, regulations requiring each bank to disclose, upon request, the names of its executive officers and principal shareholders, or their related interests, who had certain extensions of credit outstanding from their own bank or from its correspondent banks that were five percent or more of the reporting bank's equity capital, or \$500,000, whichever is less.

Comments

In accordance with the FFIEC's recommendation, the OCC published a Notice of Proposed Rulemaking in the *Federal Register* of September 27, 1983 (48 FR 44085). The Office received 22 comments on the proposed rule. One

response endorsed the proposal; the American Bankers Association concluded that the rule would reduce existing reporting requirements and thus would be beneficial to all national banks. Those commenters who objected to the proposed rule primarily cited one or more of the following grounds for their opposition: that the rule would provide little additional benefit to OCC or to the public; that the disclosure of information required by the rule would constitute an invasion of the privacy of bank insiders; that the disclosure of this information would make it more difficult for banks to obtain qualified directors; and that such disclosure could be misleading to recipients in the absence of additional information concerning these loans.

Nine of the comments received by the OCC argued that the disclosures required by the proposed rule would not significantly benefit either the OCC or members of the public. According to these responses, the OCC already has sufficient information available to monitor national bank lending to insiders; the information disclosed would be of no use to members of the general public; and/or persons desiring such information could obtain comparable data from other sources. Related concerns were raised by twelve commenters who argued that the proposed disclosure requirements would constitute unwarranted invasions of the privacy of national bank insiders. Implicit in this argument may be the assumption that whatever inconvenience may be caused to bank insiders by these requirements is not offset by corresponding benefits obtained by the recipients of these disclosures.

Two considerations should be noted in this regard. First, in amending the statutory provisions cited above requiring disclosure and reporting of insider loans, 12 U.S.C. 1817(k) and 12 U.S.C. 1972(2)(G), Congress directed the Federal bank regulatory agencies to promulgate regulations requiring such disclosure. Therefore, while the bank regulatory agencies have some degree of discretion in establishing the level of disclosure to be required, a decision by the OCC not to require any such disclosure would be inconsistent with Congress' assessment of the desirability of such disclosure.

Second, this rule requires more limited disclosure than is required by existing law. At present, national banks report, using FFIEC Form 003, (a) the names of principal shareholders, (b) the names of executive officers and principal shareholders (or certain interests

thereof) to whom the national bank has extended credit, (c) the aggregate amount of all extensions of credit to these persons and interests during the preceding year, and (d) the names of executive officers and principal shareholders with loans from correspondent banks. Copies of these reports are subject to disclosure upon request. By contrast, under the rule adopted herein, national banks need disclose only the names of such executive officers and principal shareholders who receive, or whose interests receive, extensions of credit above a specified threshold. Reporting requirements are similarly simplified; even though national banks are required by the FFIEC to report loans to these insiders on a quarterly basis, the detail of the reporting required is substantially limited. Therefore, the OCC does not agree that the disclosure and reporting required by the FFIEC directive and this rule constitute unwarranted invasions of the privacy of national bank insiders. The disclosure and reporting requirements set forth in the FFIEC directive and this rule are less burdensome than are those of existing law. Because the OCC has concluded that these more limited requirements are consistent with Congress's intent to require disclosure as expressed in the Garn-St Germain Act, the OCC has determined that the rule as proposed need not be modified on the basis of these concerns.

Eleven of the comments received by OCC stated that the disclosure required by this rule would make it more difficult for national banks to attract and keep qualified directors. According to this argument, persons otherwise qualified to serve as directors would be reluctant to do so if their credit transactions were subject to public disclosure. This concern is misplaced, however; neither the FFIEC directive nor this rule requires reporting or disclosure of loans to directors (unless those directors are also executive officers or principal shareholders of the bank itself). Consequently, even if the disclosure of certain information concerning insider loans would act as disincentive to director recruitment, this rule imposes no such disincentive.

A concern raised by five comments was that public disclosure of the fact that an insider had borrowed amounts above a specified threshold, without disclosure of additional information regarding the quality of those borrowings, could lead to unwarranted negative inferences concerning that insider. The source of this concern was language in the proposed rule which

provided that disclosure of the name of an insider "must not contain information regarding the specific amount of the individual's loans." In recognition of this concern, the language of the final rule provides only that national banks are not required to disclose information other than the names of insiders with substantial borrowings. The rule does not specify what additional information may be disclosed.

Finally, the Independent Bankers Association of America argued that the proposed rule would have a disproportionate impact on smaller banks. For those banks with capital and unimpaired surplus of less than \$100 million, the threshold for disclosure will be 5% of capital and unimpaired surplus. Typical home mortgage lending and small business lending is more likely to exceed this threshold for smaller banks than it is for larger banks. In response to this concern, the final rule provides that where aggregate extensions of credit by the bank to an executive officer or principal shareholder and to that person's related interests do not exceed \$25,000, no disclosure will be required pursuant to § 31.5(a)(1) even if that amount exceeds 5% of the bank's capital and unimpaired surplus. Similarly, where aggregate lending from the bank's correspondents to an executive officer or principal shareholder of the bank and to that person's related interests do not exceed \$25,000, no disclosure will be required pursuant to § 31.5(a)(2).

The final rule incorporates several additional changes from the text of the proposed rule. The section titled "Definitions" has been amended for two purposes. First, the amendment makes clear that, with one exception, the definitions in Regulation O, 123 CFR 215, which apply to insider loan disclosures by member banks, are not made inapplicable to national banks by the promulgation of this separate regulation. Second, however, the definition of the term "bank" is modified to reflect the differing definitions of that term in 12 U.S.C. 1817(k) and 12 U.S.C. 1972(2)(G). The former statute, which applies to loans made by the bank itself, makes reference to "insured banks"; the latter, which applies to loans made by correspondent banks, incorporates the Bank Holding Company Act definition of "bank" set forth at 12 U.S.C. 1841(c).

In accordance with the more restrictive definition applicable to 12 U.S.C. 1972(2)(G)(i), those national banks which are not "banks" under the 12 U.S.C. 1841(c) definition consequently are not "banks" whose insiders are required to report borrowings from correspondents; neither are such banks

correspondent "banks" whose loans to insiders of other banks are subject to reporting. National banks which do not satisfy the 12 U.S.C. 1841(c) definition, but which are nonetheless "insured banks" for purposes of 12 U.S.C. 1817(k), are required to disclose significant loans made to their own insiders. The definition of "bank" in the final rule is intended to reflect these disparate statutory definitions.

In addition, two other changes to the text of the proposed rule have been included in order to conform this regulation to those of other Federal bank regulatory agencies. First, the rule has been amended to require national banks to disclose information pursuant to § 31.5 only in response to written requests. Second, the rule has been amended to require national banks receiving such requests to maintain records of the disposition thereof, in addition to records of the requests received.

The OCC has decided to incorporate these regulatory provisions relating to reporting and disclosure of insider loans, previously codified at 12 CFR Part 23, with the provisions of 12 CFR Part 31 which establish quantitative limits for such insider loans. The OCC has determined to take this action for purposes of clarity and ease of reference.

Effective Date

In accordance with 5 U.S.C. 553(d), OCC finds that there exists good cause for this rule to become effective December 31, 1983, rather than 30 days following its publication. The Garn-St Germain Act provides that existing reporting and public disclosure requirements shall remain in effect until their replacements become effective. Consequently, national banks will continue to be required to submit the report described in the superseded 12 U.S.C. 1817(k)(1), *i.e.*, FFIEC Form 003, until this regulation becomes effective. The FFIEC, however, has determined to require banks to submit certain insider loan information with their quarterly reports of condition in place of the information previously obtained on Form 003. The FFIEC's action will become effective as of December 31, 1983; unless this amendment becomes effective as of the same date, the planned deletion of Form 003 cannot occur and national banks will be subjected to duplicative reporting and public disclosure requirements.

Executive Order

OCC has determined that the proposed amendments do not constitute

a "major rule" for purposes of Executive Order 12291 and therefore do not require a regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), the Secretary of the Treasury has certified that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule, together with the FFIEC actions, will ease existing reporting and disclosure requirements. The effect of this rule is expected to be beneficial to small entities rather than adverse, and small entities are expected to share the benefits of this rule equally with larger institutions.

List of Subjects in 12 CFR Part 31

National banks, Executive officers, Principal shareholders, Directors, Credit Reports, Disclosure.

For the reasons set forth in the preamble, and pursuant to its authority under 12 U.S.C. 1817(k) and 12 U.S.C. 1972(2)(G)(ii), as amended, the OCC amends 12 CFR Chapter I as follows:

PART 23—[REMOVED]

1. By removing and reserving 12 CFR Part 23 in its entirety. (The provisions of Part 23 are included in 12 CFR Part 31 in accordance with the following amendments.)

PART 31—EXTENSIONS OF CREDIT TO NATIONAL BANK INSIDERS

2. 12 CFR Part 31 is amended by revising the table of contents, by designating §§ 31.1–31.3 as Subpart A, by revising §§ 31.1 and 31.3, and by adding a new Subpart B consisting of §§ 31.4, 31.5, and 31.6 to read as follows:

Subpart A—Loans to Insiders

- Sec.
31.1 Authority.
31.2 Loan Limits.
31.3 Definitions.

Subpart B—Reports and Public Disclosure

- 31.4 Authority.
31.5 Disclosure of Insider Indebtedness.
31.6 Reports by Executive Officers and Principal Shareholders.

Authority: 12 U.S.C. 375a(4), 375b(2), 1817(k), and 1972(2)(G)(ii), as amended.

Subpart A—Loans to Insiders

§ 31.1 Authority.

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 375a(4) and 375b(2), as amended.

§ 31.2 Loan Limits.

§ 31.3 Definitions.

For the purposes of this subpart, the definitions of the terms contained in Regulation O, 12 CFR 215.2 and 215.3, apply.

Subpart B—Reports and Public Disclosure

§ 31.4 Authority.

This subpart is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 1817(k) and 12 U.S.C. 1972(2)(G)(ii), as amended.

§ 31.5 Disclosure of Insider Indebtedness.

(a) Upon receipt of a written request, a national bank shall disclose the name of each of its executive officers and principal shareholders whose aggregate indebtedness, including indebtedness of related interests of such person:

- (1) From the bank itself as of the latest quarter of the year, or
- (2) From its correspondent banks at any time during the previous calendar year,

equals or exceeds the lesser of five (5) percent of the bank's capital and unimpaired surplus, or \$500,000. For purposes of determining whether disclosure is required under this section, indebtedness under paragraph (a)(1), above, is not aggregated with indebtedness under paragraph (a)(2), above. Notwithstanding the foregoing, where the aggregate indebtedness of an executive officer or principal shareholder and that person's related interests owed to the bank itself does not exceed \$25,000, the disclosure of that person's name is not required by paragraph (a)(1), above. Further, where the aggregate indebtedness owed to the bank's correspondents of an executive officer or principal shareholder and that person's related interests does not exceed \$25,000, disclosure of that person's name is not required by paragraph (a)(2), above.

(b) National banks are not required to disclose additional information concerning the indebtedness of these executive officers or principal shareholders. The disclosure in paragraph (a)(1) above may be based on information compiled as the basis for reporting in the Commercial Bank Report of Condition and Income. The disclosure in paragraph (a)(2) above may be based on information contained in the reports referred to in § 31.6 of this part.

(c) A national bank shall maintain records of any requests for information under paragraph (a) of this section, and

records of the disposition of such requests, for a period of two years.

(d) The definitions of terms set forth in Regulation O, 12 CFR 215, and made applicable thereby to Subpart B of that Regulation, 12 CFR 215.20–215.23, apply for purposes of this subpart, except that with respect to disclosures required pursuant to paragraph (a)(1) of § 31.5, the term "bank" shall mean a Federally-chartered "insured bank", as that term is used in 12 U.S.C. 1817.

§ 31.6 Reports by Executive Officers and Principal Shareholders.

Pursuant to 12 U.S.C. 1972(2)(G)(i), executive officers and principal shareholders of banks are required annually to report to the bank's board of directors their indebtedness, and the indebtedness of their related interests, from correspondent banks of the insiders' bank. This requirement is restated in Regulation O, 12 CFR 215.22.

(Approved by the Office of Management and Budget under control number 1557-0070)

Dated: December 22, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-34513 Filed 12-26-83; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0499]

Truth in Lending; Preemption Determinations; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Preemption determinations, technical amendment.

SUMMARY: The Board is making a technical amendment to the final preemption determination under the Truth in Lending Act regarding a provision in the state law of South Carolina and published at 48 FR 43672, September 26, 1983. This action is necessary to correct a reference to the state law in the order.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667.

SUPPLEMENTARY INFORMATION: The Board's order setting forth the final preemption determinations for the states of Mississippi and South Carolina contained an incorrect reference to the section of the South Carolina law. As a

result, the final preemption determination contained in FR Doc. 83-26094 is amended as follows:

On page 43674, column 2, the first sentence of the second paragraph of "Preemption Determination—South Carolina" is amended by changing "Section 37-20-102(c)" to "Section 37-10-102(c)."

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Board of Governors of the Federal Reserve System, December 23, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-34422 Filed 12-28-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 369

Restrictive Trade Practices or Boycotts

Correction

In FR Doc. 83-33780 appearing on page 56364 in the issue of Wednesday, December 21, 1983, make the following correction:

In the second column, the sixth line of "Supplement 11—Interpretation" should have read "bid or similar proposal, containing a "

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-1024]

Consolidated Foods Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Modifying order.

SUMMARY: On December 7, 1983, the Federal Trade Commission deleted Paragraph VIII from the order issued against Consolidated Foods Corp. on December 21, 1965 (31 FR 1147). The Commission has determined that order provisions requiring prior approval of future acquisitions generally should not have terms exceeding ten years.

DATES: Consent Order issued December 21, 1965. Modifying Order issued December 7, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Selig S. Merber, Washington, D.C. 20580. (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matter of Consolidated Foods Corporation, a corporation. Codification appearing at 31 FR 1147 is deleted.

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18)

Order Reopening Proceeding and Modifying Order

In the matter of Consolidated Foods Corporation, a corporation, Docket No. C-1024.

By petition filed August 8, 1983, respondent Consolidated Foods Corporation ("Consolidated") requests, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), that the Commission modify its final order in this matter to remove the prior approval requirement contained in Paragraph VIII of the order. Pursuant to § 2.51 of the Commission's Rules of Practice and Procedure, the petition was placed on the public record for thirty days. No comments were received.

The Commission has determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years. In most cases, the Commission believes that such prior approval provisions will have served their remedial and deterrent purposes after ten years and that the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time. The Commission has reviewed respondent's petition and has concluded that the order has served its law enforcement and remedial goals.

Therefore, upon consideration of the petition, the Commission, in the exercise of its discretion, finds that elimination of Paragraph VIII is in the public interest.

Accordingly, it is ordered, that the proceeding be, and it hereby is, reopened for the purpose of modifying the Order entered therein;

It is further ordered, that Paragraph VIII shall terminate upon service of this order.

By direction of the Commission.

Issued: December 7, 1983.

Emily H. Rock,

Secretary.

[FR Doc. 83-34550 Filed 12-28-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-3128]

Lloyd's Furs, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts or practices or unfair methods of competition, this consent order requires a Denver, Colo. company engaged in the advertising, sale and distribution of furs and fur-containing garments, among other things, to cease falsely representing a garment's designer or manufacturer. The order requires that any fur or fur-containing garment bearing a manufacturer's or designer's label accurately identify the manufacturer or designer of the garment. Further, the company is required to comply with all written labeling instructions received from a manufacturer or designer, and maintain records documenting from whom a garment was received and to whom it was sold, as well as records documenting compliance with the Fur Products Act and this order.

DATES: Complaint and Order issued December 5, 1983.*

FOR FURTHER INFORMATION CONTACT: Claude C. Wild, Director, 6R, Denver Regional Office, Federal Trade Commission, Suite 2900, 1405 Curtis St., Denver, CO 80202. (303) 837-2271.

SUPPLEMENTARY INFORMATION: On Wednesday, Sept. 21, 1983, there was published in the *Federal Register*, 48 FR 43051, a proposed consent agreement with analysis in the Matter of Lloyd's Furs, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective

* Copies of the Complaint and the Decision and Order filed with the original document.

actions and/or requirements; 13.533-37 Formal regulatory and/or statutory requirements; 13.533-45 Maintain records. Subpart—Misbranding or Mislabeled; § 13.117 Advertising and promotion; § 13.1212 Formal regulatory and statutory requirements; 13.1212-30 Fur Products Labeling Act; § 13.1255 Manufacture or preparation; § 13.1320 Scientific or other relevant facts; § 13.1325 Source or origin; 13.1325-60 Maker or seller. Subpart—Misrepresenting Oneself and Goods—Goods; § 13.1623 Formal regulatory and statutory requirements; 13.1623-30 Fur Products Labeling Act; § 13.1680 Manufacture or preparation; § 13.1740 Scientific or other relevant facts; 13.1745 Source or origin; § 13.1745-60 Maker or seller. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure; § 13.1852 Formal regulatory and statutory requirements; 13.1852-35 Fur Products Labeling Act; § 13.1865 Manufacture or preparation; § 13.1895 Scientific or other relevant facts; § 13.1900 Source or origin; 13.1900-40 Fur Products Labeling Act; 13.1900-40(a) Maker or seller.

List of Subjects in 16 CFR Part 13

Furs, Trade practices.
(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 83-94546 Filed 12-28-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-1887]

Bulova Watch Co., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on April 1, 1971 (36 FR 8142), by deleting Paragraph 2 and 4.B. from the order. The modification allows the company to prevent transshipping of its watch and clock products by its dealers.

DATES: Consent Order issued April 1, 1971. Modifying Order issued December 12, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Selig S. Merber, Washington, D.C. 20580. (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matters of Bulova Watch Company, Inc.,

a corporation. Codification appearing at 36 FR 8142 remains unchanged.

List of Subjects in 16 CFR Part 13

Trade practices, Watch and clock products.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening and Modifying Cease and Desist Order

In the matter of Bulova Watch Company, Inc., a Corporation; (Docket No. C-1887).

By petition of August 11, 1983, respondent Bulova Watch Company, Inc. ("Bulova") requests that the Commission vacate its April 1, 1971 Order against Bulova in its entirety or, in the alternative, suspend the Order for a ten-year period, at the end of which period Bulova would have the burden of demonstrating that the Order should be permanently vacated. The Order in this matter prohibits Bulova from engaging in certain acts and practices, including resale price maintenance and restricting transshipment by sellers of its watch or clock products. Pursuant to § 2.51 of the Commission Rules of Practice, Bulova's petition was placed on the public record for comment. No comments were received.

Upon consideration of Bulova's petition and supporting materials, the Commission has determined that the petition makes a satisfactory showing that changed conditions of fact and law and the public interest require reopening the Order and modifying it by deleting its transshipment provisions. The Supreme Court has now determined that non-price vertical restraints such as transshipment restrictions are not *per se* illegal, but instead should be evaluated pursuant to the rule of reason.

Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 57-59 (1977). From that perspective, the Commission had determined that the transshipment provisions in the Order are no longer necessary to prevent injury to competition in this industry, and that Bulova will likely suffer significant competitive injury unless those provisions are eliminated. The Commission also finds that Bulova has failed to demonstrate that the remaining provisions of the Order should be modified or set aside. Bulova's petition does not point to changes in law or fact or public interest considerations sufficient to require modifying or deleting those provisions.

Accordingly,

It is ordered that this matter be reopened and that the order be modified, as of the effective date of this

Order, by deleting paragraph 2 of the Order, which reads:

2. Entering into, maintaining, or enforcing any contract, agreement, combination, understanding, or course of conduct which has as its purpose restricting the persons to whom any Bulova dealer or other person may resell Bulova watch or clock products.

and by deleting paragraph 4.B. of the Order, which reads:

B. because the dealer transshipped or sold Bulova watch or clock products to a retailer.

By direction of the Commission, Commissioners Pertschuk and Bailey voted in the negative.

Issued: December 12, 1983.

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Patricia P. Bailey in Bulova Watch Company, Inc., Docket No. C-1887

A Commission majority has voted to allow Bulova to impose transshipping bans on its dealers: that is, Bulova can now order its dealers not to sell to discounters. Indeed, Bulova admits that it wants the order modification for this very purpose. (Bulova petition, p. 9) My motion to reject Bulova's petition having failed, I now dissent from the majority's vote.

Bulova claims that it needs to ban transshipping in order to prevent "free riding" on the pre- and post-sale services offered by authorized dealers. There is, however, nothing in Bulova's petition which demonstrates that its inability to prevent transshipment decreases dealer loyalty and sales efforts.

There are only two pre-sale "services" which Bulova expects of its dealers: (1) That their displays be kept "clean and neat"; (2) a very nebulous commitment to its cooperative advertising program. The extent of this participation is determined by the retailer: Bulova requires only that the dealer be "capable" of using "some" of the company's advertising or promotion. The advertising sample included in the petition merely picture the watch, sometimes with a description and price. This is not surprising. As I noted in *Lenox, Inc.*, D. 8718, there are many products whose function of esthetic appeal is self-evident. Sales of these goods do not require a blandiloquent personal sales effort or major consumer education program. I would put watches (both digital and mechanical) in this category. Authorized and non-authorized watch dealers advertise in the same way. There are no special promotional efforts which are

discouraged by transshipping.* It follows, then, that the only pre-sale "service" which is fostered by this ban on transshipping is a non-discountable price, which some would say conveys an image of quality. I have never accepted this argument because it leads very logically to the position that resale price maintenance is an even stronger guarantee of that precious "prestige image".

Bulova demands the following of its authorized dealers in post-sale service capabilities: "The Bulova dealer must be capable of servicing and repairing the Bulova product or to [sic] expeditiously forward the product to Bulova corporate headquarters for service". Sixty percent of Bulova's authorized dealers fulfill their service obligations via the mailbox option. (Bulova petition pp. 4-5) Under these circumstances, I fail to see how a discount house's "no frills" sale tarnishes Bulova's image by allegedly offering the consumer less than is provided by authorized dealers.

[FR Doc. 83-34577 Filed 12-28-83; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Baby Crib Requirements; Clarification of Effective Dates

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its baby crib rules to include the date that the Commission's requirements concerning the safety of cut-outs on panels of baby cribs became effective. Although the *Federal Register* issuance giving official notice of the requirements for crib panel cut-outs included the date the requirements were put into effect, the date did not specifically appear in all the applicable sections when the requirements were published in the Code of Federal Regulations (CFR). This amendment means only that the effective date of these requirements, which is already in operation, will

* Even the seminal "Chicago School" exploration of the free rider theory limited its applicability to special services "specific to the commodity and unrelated to the retailers' methods of generally doing business. . . . This argument applies to products which are unfamiliar to the mass of consumers either because the product is new (or embodies new features) or because it is purchased infrequently by a relatively small proportion of households." Telser, "Why Should Manufacturers Want Fair Trade," *J. Law Econ.*, 80, 89, 105 (October, 1960).

appear in all the applicable sections in future issues of the CFR.

EFFECTIVE DATE: The clarification will become effective December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Christine Nelson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, Phone (301) 492-6400.

SUPPLEMENTARY INFORMATION: Since February 1, 1974, in order to avoid being designated a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), every full-size baby crib shipped in interstate commerce, must meet certain spacing requirements for components such as crib slats. (16 CFR 1500.18(a)(13)) Such slats must be sufficiently narrow to avoid entrapment of a baby. (16 CFR Part 1508) Since August 9, 1976, the same spacing requirements apply to non-full-size baby cribs. (16 CFR 1500.18(a)(14) and 1509).

From subsequent information and investigations, the Commission learned of deaths and injuries to children due to an additional head entrapment hazard—this one associated with certain cut-out designs near or at the top of crib panels (such as headboards or footboards). Investigation showed that children were able to stand at or climb up to the top of crib panels and become trapped by a cut-out opening large enough for the baby's neck to enter but too small for self-extraction of the baby's head.

To remedy the hazard, the full-size and non-full size crib rules were amended to address a neck and head entrapment hazard associated with certain design configurations of cut-outs on crib panels, by prohibiting cribs with such configurations (47 FR 47534, Oct. 27, 1982).

The *Federal Register* notice of the final rule addressing the neck and head entrapment hazard from cut-out designs on full-size and non-full-size crib panels, included the effective date of the rule, April 27, 1983. However, in transposing this document from the *Federal Register* to the CFR, the effective date of the new requirements which is cited at Parts 1508 and 1509 of 16 CFR, does not appear in the sections prohibiting shipment in interstate commerce of cribs with noncomplying cut-outs at § 1500.18(a)(13) and manufacture at § 1500.18(a)(14). To conform the prohibitions sections with the requirements sections of the regulations, the Commission amends the prohibitions sections of the crib rules to include all the effective dates now actually required for cribs shipped in interstate commerce. The Commission

believes this conformity will remove any confusion that may exist for the public due to the separation of the prohibitions and requirements of the crib rules.

Under the Administrative Procedure Act, the issuance or amendment of a rule must generally be preceded by a notice of proposed rulemaking and an opportunity for submission of written comments; a substantive rule is required to be published at least 30 days before its effective date. An exception exists for the notice and comment procedure when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that public procedure thereon are unnecessary or contrary to the public interest." 5 U.S.C. 553(b)(B).

In this case, the Commission finds that notice and comment rulemaking procedure is unnecessary because the regulations are to be amended only to include an effective date which is already in operation and which is duly noted in the requirements for full-size and non-full-size cribs. For this reason, the Commission also finds good cause to dispense with the 30-day delay in effective date provided at 5 U.S.C. 553(d) for publication of a substantive rule, particularly in light of the fact that these are technical amendments designed to clarify an effective date already noted in the requirements regulations.

List of Subjects in 16 CFR Part 1500

Consumer protection, Cribs, Infants, Children.

Part 1500—[Amended]

Therefore, pursuant to provisions of the Administrative Procedure Act, 5 U.S.C. 553, § 1500.18(a)(13) and section 1500.18(a)(14) of Title 16, Chapter II, Subchapter C of the Code of Federal Regulations are amended as follows:

§ 1500.18 [Amended]

1. In § 1500.18(a)(13), remove the words "Part 1508 of this chapter" and substitute therefor, the following:

(a) * * *

(13) * * * §§ 1508.2 through 1508.10 of this chapter; and any full size baby crib (as defined in § 1508.1(a) of this chapter) that is manufactured on or after April 27, 1983, and that does not comply with §§ 1508.2 through 1508.11 of this chapter.

* * *

2. In § 1500.18(a)(14), remove the words "Part 1509 of this chapter" and substitute therefor, the following:

(a) * * *

(14) * * * §§ 1509.3 through 1509.12 of this chapter; and any non-full size baby crib (as defined in § 1509.2 of this

chapter) that is manufactured on or after April 27, 1983, and that does not comply with §§ 1509.3 through 1509.13 of this chapter.

Effective Date: The amendments shall become effective December 29 1983.

(5 U.S.C. 553; 15 U.S.C. 1261 et seq.)

Dated: December 23, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-34554 Filed 12-28-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 80N-0266]

Gras Status of Carbon Dioxide, Nitrogen, Helium, Propane, N-Butane, Iso-Butane, and Nitrous Oxide

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, and nitrous oxide are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 1, 1982 (47 FR 43392), FDA published a proposal to affirm that carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, and nitrous oxide are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature reviews and the reports of the Select Committee on GRAS Substances (the Select Committee) on these gases are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also

are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, and nitrous oxide, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, or nitrous oxide were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of these gases under conditions different from those set forth in this final rule has been waived.

FDA received one comment on carbon dioxide in response to the proposal. The comment submitted information on the use of carbon dioxide under high pressure in a liquid or supercritical fluid state as a solvent or vehicle for food processing and requested that the final rule be modified to include this use.

FDA has reviewed the information submitted with this comment and concludes that carbon dioxide liquid and supercritical fluid are significantly different from carbon dioxide gas both in their physical and chemical properties and in their potential use in foods. Therefore, the agency concludes that these substances are beyond the scope of the proposal, and the agency is not modifying the proposed regulation for carbon dioxide in response to this comment. However, FDA will consider issuing a separate GRAS or food additive regulation for liquid carbon dioxide and for supercritical carbon dioxide if GRAS or food additive petitions containing appropriate information are submitted to the agency in accordance with 21 CFR 170.35 or 171.1.

Thus, FDA is adopting the GRAS affirmation regulations for these gases with minor editorial changes.

In the proposal, FDA stated that it would work with the Committee on Codex Specifications (now known as the Committee on the Food Chemicals Codex) of the National Academy of Sciences to develop acceptable specifications for these gases used as direct food ingredients and would incorporate those specifications into the regulation when they were developed. To date, work on the specifications remains incomplete. Until the specifications are developed, the butanes, carbon dioxide, helium, nitrogen, nitrous oxide, and propane for direct food uses must comply with the descriptions in 21 CFR 184.1165, 184.1240, 184.1335, 184.1540, 184.1545, and 184.1655, respectively, and must be of a purity suitable for their intended use.

The agency has previously determined under 21 CFR 25.24(d)(6) (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. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and 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 authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

**PART 182—SUBSTANCES
GENERALLY RECOGNIZED AS SAFE**

§§ 182.1165, 182.1240, 182.1355, 182.1540, 182.1545, and 182.1655 [Removed]

1. Part 182 is amended by removing § 182.1165 *Butane*, § 182.1240 *Carbon dioxide*, § 182.1355 *Helium*, § 182.1540 *Nitrogen*, § 182.1545 *Nitrous oxide*, and § 182.1655 *Propane*.

**PART 184—DIRECT FOOD
SUBSTANCES AFFIRMED AS
GENERALLY RECOGNIZED AS SAFE**

2. Part 184 is amended:

a. By adding new § 184.1165, to read as follows:

§ 184.1165 n-Butane and iso-butane.

(a) *n*-Butane and iso-butane (empirical formula C_4H_{10} , CAS Reg. Nos. 106-97-8 and 75-28-5, respectively) are colorless, odorless, flammable gases at normal temperatures and pressures. They are easily liquefied under pressure at room temperature and are stored and shipped in the liquid state. The butanes are obtained from natural gas by fractionation following absorption in oil, adsorption to surface-active agents, or refrigeration.

(b) The Food and Drug Administration is developing food-grade specifications for *n*-butane and iso-butane in cooperation with the National Academy of Sciences. In the interim, the ingredients must be of a purity suitable for their intended use.

(c) In accordance with § 184.1(b)(1), these ingredients are used in food with no limitations other than current good manufacturing practice. The affirmation of these ingredients as generally recognized as safe (GRAS) as direct human food ingredients is based upon the following current good manufacturing practice conditions of use:

(1) The ingredients are used as propellants, aerating agents, and gases as defined in § 170.3(o)(25) of this chapter.

(2) The ingredients are used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1240, to read as follows:

§ 184.1240 Carbon dioxide.

(a) Carbon dioxide (empirical formula CO_2 , CAS Reg. No. 124-38-9) occurs as a colorless, odorless, noncombustible gas at normal temperatures and pressures. The solid form, dry ice, sublimates under atmospheric pressure at a temperature of $-78.5^\circ C$. Carbon dioxide is prepared as a byproduct of the manufacture of lime during the "burning" of limestone, from the combustion of carbonaceous material, from fermentation processes, and from gases found in certain natural springs and wells.

(b) The Food and Drug Administration is developing food-grade specifications for carbon dioxide in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a leavening agent as defined in § 170.3(o)(17) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; and a propellant, aerating agent, and gas as defined in § 170.3(o)(25) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

c. By adding new § 184.1355, to read as follows:

§ 184.1355 Helium.

(a) Helium (empirical formula He, CAS Reg. No. 7440-59-7) is a colorless, odorless, flavorless, nonflammable, inert gas. It is lighter than air and is produced by the liquefaction and purification of natural gas.

(b) The Food and Drug Administration is developing food-grade specifications for helium in cooperation with the National Academy of Sciences. In the interim, the 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

limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

d. By adding new § 184.1540, to read as follows:

§ 184.1540 Nitrogen.

(a) Nitrogen (empirical formula N_2 , CAS Reg. No. 7727-37-9) is a colorless, odorless, flavorless gas that is produced commercially by the fractionation of liquid air.

(b) The Food and Drug Administration is developing food-grade specifications for nitrogen in cooperation with the National Academy of Sciences. In the interim, the 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 limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a propellant, aerating agent, and gas as defined in § 170.3(o)(25) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

e. By adding new § 184.1545, to read as follows:

§ 184.1545 Nitrous oxide.

(a) Nitrous oxide (empirical formula N_2O , CAS Reg. No. 10024-97-2) is also known as dinitrogen monoxide or laughing gas. It is a colorless gas, about 50 percent heavier than air, with a slightly sweet smell. It does not burn but will support combustion. Nitrous oxide is manufactured by the thermal decomposition of ammonium nitrate. Higher oxides of nitrogen are removed by passing the dry gas through a series of scrubbing towers.

(b) The Food and Drug Administration is developing food-grade specifications for nitrous oxide in cooperation with the National Academy of Sciences. In the interim, the 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 limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a propellant, aerating agent, and gas as defined in § 170.3(o)(25) of this chapter.

(2) The ingredient is used in dairy product analogs as defined in § 170.3(n)(10) of this chapter at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

f. By adding new § 184.1655, to read as follows:

§ 184.1655 Propane.

(a) Propane (empirical formula C_3H_8 , CAS Reg. No. 74-98-6) is also known as dimethylmethane or propyl hydrid. It is a colorless, odorless, flammable gas at normal temperatures and pressures. It is easily liquefied under pressure at room temperature and is stored and shipped in the liquid state. Propane is obtained from natural gas by fractionation following absorption in oil, adsorption to surface-active agents, or refrigeration.

(b) The Food and Drug Administration is developing food-grade specifications for propane in cooperation with the National Academy of Sciences. In the interim, the 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 limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a propellant, aerating agent, and gas as defined in § 170.3(o)(25) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective January 30, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))

Dated: November 23, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-34427 Filed 12-28-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Pyrantel Tartrate

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 for Hubbard Milling Co., providing for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hubbard Milling Co., 424 North Front St., Mankato, MN 56001, is sponsor of NADA 133-509 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix, supplied by Pfizer, Inc., in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are used in making complete swine feeds for aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; for aid in prevention of establishment, removal, and control of nodular worm (*Oesophagostomum*) infections; and for removal and control of large roundworm (*Ascaris suum*) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval of this NADA is discussed in the freedom of information summary.

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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animals feeds.

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 558 is amended in § 558.485 by adding new paragraph (a)(16) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(16) To No. 012190: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3) of this section.

Effective date. This amendment is effective December 29, 1983.

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

Dated: December 19, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-34429 Filed 12-28-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

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 for Mac-Page, Inc., providing for safe and effective use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Mac-Page, Inc., 1600 South Wilson Ave., Dunn, NC 28334, is sponsor of NADA 133-490 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix, supplied by Pfizer, Inc., in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are used in making complete swine feeds used for aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; for aid in prevention of establishment of nodular worm (*Oesophagostomum*) infections; and for removal and control of large roundworm (*Ascaris suum*) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information (FOI) summary.

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 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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 558 is amended in § 558.485 by adding new paragraph (a)(17) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.485 Pyrantel tartrate.

(a) * * *

(17) To No. 047427: 9.6 and 19.2 grams per pound, paragraphs (e) (1) and (2) of this section.

Effective date. This amendment is effective December 29, 1983.

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

Dated: December 19, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-34428 Filed 12-28-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 111

[Docket No. R-83-1082; FR-1763]

Fair Housing Assistance Program; Program Description and Eligibility Criteria

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations in 24 CFR Part 111, which describe the program components for State and local Fair Housing agencies and set forth the threshold eligibility criteria for their participation in the Fair Housing Assistance Program (FHAP). The purpose of the final rule is to permit State and local Fair Housing agencies to qualify for training support funding, without regard to the number of years the agencies have participated in the Fair Housing Assistance Program.

EFFECTIVE DATE: Effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication. Further notice of effectiveness of this final rule will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Room 5214, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202) 426-3500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department modified the non-competitive component of its Fair Housing Assistance Program to make training support funds available to all participating agencies, regardless of the number of years an agency has participated in the program, in an interim rule published June 1, 1983 (48

FR 24361). The previous rule had provided training support funds to agencies only during their first and second years of participation.

Financial assistance for training is provided to assure that the State and local agencies have the skills and technical knowledge required to carry out their enforcement responsibilities. An essential element in administering an effective State or local fair housing program is the training of personnel. Fair housing law is a rapidly changing area, and the Department recognizes that intermittent, informal training is unlikely to provide the assistance and support necessary for State and local agencies to process housing discrimination complaints effectively, and in conformity with Federal standards. In order to assure consistency in the administration of, and approaches to, fair housing enforcement, the training component of the Fair Housing Assistance Program is used for the expenses associated with providing training to State and local agency personnel. The interim rule permitted agencies participating in the program to receive training support funds. The Department invited public comments, which were due August 1, 1983. No public comments were received. Accordingly, the interim rule published on June 1, 1983 (48 FR 24361), to amend 24 CFR Part 111 is being adopted, without change, as a final rule.

HUD takes this opportunity to make a technical amendment to the rule by correcting the authority citation which appeared at 48 FR 24362.

Information collection requirements contained in this regulation (§ 111.105(b)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2529-0005.

This rule does not constitute a "major rule" as the term is defined in section 1(b) of the Executive Order 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 7th Street, SW., Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because the training support funds afforded to State and local agencies to enable their participation in HUD-sponsored training should benefit all governmental jurisdictions, irrespective of their size.

The Catalog of Federal Domestic Assistance Program number and title is 14.401, Fair Housing Assistance Program.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47465) as item Agenda Number FH&EO-4-82 under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in Part 111

Fair housing, Cooperative agreements, Grant programs—housing and community development.

PART 111—[AMENDED]

Accordingly, 24 CFR Part 111 is amended as follows:

The interim rule published on June 1, 1983 (48 FR 24361) to amend 24 CFR Part 111 is adopted without change, except that the authority citation at 48 FR 24362 is corrected to read: (Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601-19); Section 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

(Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3601-19; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: December 19, 1983.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

(FR Doc. 83-3444 Filed 12-28-83; 8:45 am)

BILLING CODE 4210-28-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 7931]

Employment Taxes and Collection of Income Tax at Source; Deposits of Railroad Retirement Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulatory amendments which revise the procedure for remittance of railroad retirement tax by employers to the Railroad Retirement Account. Changes to the applicable tax law were made by the Railroad Retirement Solvency Act of 1983, which requires, among other things, (a) that certain railroad employers remit railroad retirement tax more rapidly and frequently than before and (b) that payments to the Railroad Retirement Account be allocated more rapidly than before. The amendments will implement the Act's requirements regarding remittance of such tax.

DATES: These amendments are effective with respect to railroad retirement tax withheld or imposed upon compensation actually or constructively paid after December 31, 1983. However, these amendments do not apply with respect to railroad retirement tax withheld or imposed upon compensation deemed to be paid in 1983 under § 31.3231(e)-1(d)(3).

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1983, the **Federal Register** published proposed amendments to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR Part 31) under section 6302(c) of the Internal Revenue Code of 1954 (48 FR 50567). These amendments conform the regulations to section 226 of the Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76; 97 Stat. 426). One written and several oral comments concerning this notice were received, and a public hearing was held on December 14, 1983. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury decision with several revisions

in response to those comments which are discussed below.

Public Comments

Several technical issues were raised in comments received by the Service concerning the above-mentioned notice of proposed rulemaking. One commentator noted that the proposed amendments appear to require that railroad retirement tax reported on Form CT-1, the annual railroad retirement tax return, in excess of taxes previously deposited must be paid by January 31st even though that return is not required to be filed until the end of February, and urged that some appropriate adjustment be made. After consideration of this comment, it was determined that the proposed amendments be revised to allow the year-end "catch-up" deposit of railroad retirement tax to be made by the end-of-February due date for Form CT-1.

This commentator also wrote that applying the new eighth-monthly deposit requirement would be especially difficult with respect to the section 3221(c) supplemental annuity tax which is computed on the basis of total man-hours compiled from monthly wage form reports required by the Interstate Commerce Commission. He argued that since total man-hours are compiled after the end of the month, railroads would have difficulties making eighth-monthly deposits of supplemental annuity tax which is not computed until the end of each month. After consideration of his comments, the Service determined that requiring eighth-monthly deposits of estimated supplemental annuity tax would create too much paperwork and recordkeeping burdens in comparison with the relatively minor benefit of more frequent deposits to the railroad retirement supplemental annuity fund. Therefore, this Treasury decision adopts his suggestion that railroads be required to deposit their supplemental annuity tax once a month with the first eighth-monthly deposit of railroad retirement tax required to be made after the 15th of the month following the month with respect to which the supplemental annuity tax arises.

Another commentator urged that a \$10,000 deposit minimum be established as a threshold for the requirement that a railroad retirement tax deposit be made by a wire transfer instead of through the Federal Tax Deposit system; he proposed this rule to replace the proposed requirement that a railroad make all payments during the year, no matter how small, by wire transfer if it had at least \$1 million of railroad retirement tax for the year 2 years

earlier. After considering this and other comments on this issue, the Service determined that certainty regarding which payment method must be used for an entire year is preferable to determining on a deposit-by-deposit basis whether a wire transfer of railroad retirement tax must be made. It is noted in this regard that a small railroad subsidiary which files returns of tax under its own employer identification number (E.I.N.) will determine whether it must make wire transfers of its railroad retirement tax payments on the basis of its own total railroad retirement tax liability 2 years earlier under its own E.I.N. rather than the total tax liability under its parent company's E.I.N.

One caller inquired whether the 95 percent "safe-haven" of § 31.6302(c)-1(a)(1)(i)(b) applicable to employers making eighth-monthly deposits of social security and withheld income tax also applies to employers who make eighth-monthly deposits of railroad retirement tax. Since this Treasury decision generally incorporates the rules of § 31.6302(c)-1(a)(1)(i), this 95 percent "safe-haven" does apply to employers who make eighth-monthly deposits of railroad retirement tax.

Non-Applicability of Executive Order 12291

It has been determined that this Treasury decision is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the order dated April 29, 1983.

Regulatory Flexibility Act

Although this document promulgates legislative regulations under section 6302(c) of the Internal Revenue Code of 1954, the Internal Revenue Service has concluded that these amendments do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6) since these revisions were mandated by section 226 of the Railroad Retirement Solvency Act of 1983.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these amendments is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel

from other offices of the Internal Revenue Service and Treasury Department participated in developing regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of amendments to the regulations

PART 31—[AMENDED]

Accordingly, the proposed amendments to 26 CFR Part 31 are adopted, revised as follows:

Paragraph 1

Section 31.6302(c)-1 is amended by adding a new subdivision (v) to paragraph (a)(1) thereof. The added provisions read as follows:

§ 31.6302(c)-1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement—(1) In general.* . . .
 (v) If the aggregate amount of taxes reportable on Form CT-1, the return relating to an employer's railroad retirement tax payments, for a return period exceeds the total amount deposited by the employer pursuant to paragraph (a)(1)(i) of this section for such return period by \$100 or more, the employer shall, on or before the last day of the second calendar month following the return period, deposit with a Federal Reserve bank or authorized financial institution an amount equal to the amount by which the taxes reportable on Form CT-1 exceed the total deposits (if any) of such taxes made pursuant to subdivision (i) of this subparagraph for such period.

Par. 2

Section 31.6302(c)-2 is amended as follows:

1. Paragraph (a)(2) is redesignated as paragraph (a)(3), and the phrase "beginning after March 31, 1964," in paragraph (a)(3) as so redesignated is removed and the phrase "before January 1, 1984," is inserted in lieu thereof.

2. Paragraph (a)(1) is redesignated as paragraph (a)(2). "In general; before 1984" is inserted as the heading of paragraph (a)(2) as so redesignated in lieu of "In general", and the phrase "before January 1984" is inserted immediately following the term "any calendar month" therein.

3. A new paragraph (a)(1) is added. The added provisions read as follows:

§ 31.6302(c)-2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.

(a) *Requirement—(1) In general; after 1983.* In the case of a calendar month which begins after December 31, 1983, if, at a time prescribed under § 31.6302(c)-1(a)(1) (i) or (v) for the deposit of undeposited taxes, the aggregate amount of undeposited employee tax withheld after December 31, 1983, under section 3202 and employer tax imposed after December 31, 1983, under section 3221(a) and (b) equals an amount required to be deposited under § 31.6302(c)-1(a) (1)(i) or (v) the employer shall deposit the undeposited railroad retirement taxes described in sections 3202 and 3221 at such time in the manner prescribed in § 31.6302(c)-1(a)(1) (i) or (v) (except that undeposited railroad retirement taxes described in section 3221 (c) shall in no case be required to be deposited earlier than the first day on which a deposit is otherwise required by § 31.6302 (c)-1 (a) (1) (i) to be made after the 15th day of the month following the month in which the section 3221 (c) tax arises).

Notwithstanding the preceding sentence, and notwithstanding subdivision (v) of § 31.6302 (c)-1 (a) (1), if, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded \$1 million, such employer shall deposit his undeposited railroad retirement taxes required to be deposited for the current calendar year in accordance with Revenue Procedure 83-90, 1983-52 I.R.B. 18, (relating to transfers by wire to the Treasury).

This Treasury decision is issued under the authority contained in section 6302 (c) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 775, 26 U.S.C. 6302 (c); 68A Stat. 917; 26 U.S.C. 7805). Approved by the Office of Management and Budget under control number 1545-0001.

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

Approved: December 21, 1983.
 John E. Chapoton,
 Assistant Secretary of the Treasury.

VETERANS ADMINISTRATION

38 CFR Part 21

Dependents' Educational Assistance;
Eligible Child's Period of Eligibility

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: This regulation states more clearly the beginning date for an eligible child's period of eligibility for dependents' educational assistance. It addresses for the first time cases where someone between his or her 18th and 26th birthday is adopted or becomes a stepchild of a veteran. This will better acquaint the public with our policy in this matter.

EFFECTIVE DATE: November 29, 1983.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: On page 29716 of the Federal Register of June 28, 1983, there was published a notice of intent to clarify effective dates of awards of dependents' educational assistance.

Interested people were given 30 days in which to submit comments, suggestions or objections. The VA (Veterans Administration) received one letter containing a suggestion.

The writer believed that the VA was attempting to adopt a different standard for defining an adopted child than is used in §§ 3.57 and 3.807 of this chapter. Since the VA is bound by the definition in 38 U.S.C. 101(4)(A), this is not the case. However, since this was not clear, the final regulation has been amended to clarify this matter.

The VA has determined that this regulation does not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than \$100 million. The regulation will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs hereby certifies that this regulation will not have a significant impact on a substantial number of small entities as they are defined in the

Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this regulation will affect only individual benefit recipients. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 29, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL
REHABILITATION AND EDUCATION

In § 21.3041, paragraphs (a) and (b) are revised to read as follows:

§ 21.3041 Periods of eligibility; child.

(a) *Basic beginning date.* The basic beginning date of an eligible child's period of eligibility is his or her 18th birthday or successful completion of secondary schooling, whichever occurs first. See paragraph (b) of this section and § 21.3040 (a) and (b) (38 U.S.C. 1712(a)).

(b) *Exceptions to basic beginning date.* (1) An eligible child may have a beginning date earlier than the basic beginning date when he or she has—

(i) Completed compulsory school attendance under applicable State law, or

(ii) Passed his or her 14th birthday and has a physical or mental handicap. See § 21.3040(a).

(2) The eligible child shall have a beginning date later than the basic beginning date when any of the following circumstances exist.

(i) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating.

(ii) If the child becomes eligible through the death of a veteran, the date of death will be the beginning date of eligibility if it occurs after the child's

18th birthday and before his or her 26th birthday.

(iii) The child may become eligible through qualifying as the veteran's adopted child (see § 3.57(c)) or by becoming a stepchild of the veteran and a member of the veteran's household. If either of these events occurs after the child's 18th birthday and before his or her 26th birthday, the effective date of eligibility will be whichever of the following is appropriate—

(A) The date the child qualifies as an adopted child under § 3.57(c), or

(B) The date the child becomes the veteran's stepchild and a member of his or her household (38 U.S.C. 1701).

[FR Doc. 83-34492 Filed 12-28-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 60

[A-3-FRL-2497-4; Docket No. AW700MD]

Standards of Performance for New
Stationary Sources; Delegation of
Authority to the State of Maryland

AGENCY: Environmental Protection Agency.

ACTION: Rule-related notice.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). On August 22, 1983 and September 21, 1983, the State of Maryland requested EPA to delegate to it the authority for additional NSPS source categories. EPA granted the request on September 30, 1983. The State now has authority to implement and enforce NSPS regulations for glass manufacturing plants, stationary gas turbines, automobile and light-duty truck surface coating operations, ammonium sulfate manufacture, asphalt processing and asphalt roofing manufacture, lead-acid battery manufacturing plants, phosphate rock plants, industrial surface coating: large appliances, surface coating of metal furniture, metal coil surface coating, graphic arts industry: publication rotogravure printing, electric utility steam generating units for which construction commenced after September 18, 1978 and storage vessels for petroleum liquids constructed after May 18, 1978. Applications and reports required under the NSPS regulations for which EPA has delegated Maryland

authority to implement and enforce should be sent to the Maryland Air Management Administration rather than to EPA Region III.

EFFECTIVE DATE: September 30, 1983.

ADDRESSES: Applications and reports required under all NSPS source categories for which EPA has delegated Maryland authority to implement and enforce should be addressed to the Maryland Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201, rather than to EPA Region III.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe of EPA Region III's Air Management Branch, telephone 215/597-8170.

SUPPLEMENTARY INFORMATION: On August 22, 1983 and September 21, 1983 the State of Maryland requested EPA to delegate to it authority to implement and enforce additional NSPS source categories. Maryland requested these delegations to supplement the delegation for other source categories which the State had already received and of which EPA had published notification at 43 FR 69362, December 3, 1979.

Delegation of the additional standards was made by the following letter on September 30, 1983:

Mr. George P. Ferreri,
Director, Maryland Air Management
Administration, Maryland State
Department of Health and Mental
Hygiene, 201 West Preston Street,
Baltimore, MD 21201

Dear Mr. Ferreri: On September 15, 1978 we delegated to the State of Maryland the authority for implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS) that had been promulgated by the Environmental Protection Agency. On the following dates, EPA promulgated NSPS for the source categories listed below.

10/7/80—Glass Manufacturing Plant
1/27/82—Stationary gas turbine
12/24/80—Automobile and light-duty truck
surface coating operation
11/12/80—Ammonium sulfate manufacturing
plant
8/6/82—Asphalt processing and asphalt
roofing manufacturing
4/16/82—Lead acid battery manufacturing
4/16/82—Phosphate Rock Plant
10/27/82—Industrial surface coating-large
appliances
10/29/82—Surface coating of metal furniture
11/1/82—Metal coil surface operation
11/8/82—Graphic arts industry-publication
rotogravure printing
2/6/80—Revised Steam Generators
12/18/80—Revised Petroleum Storage

In your letters of August 22, 1983 and September 21, 1983, you requested that EPA

delegate to the State of Maryland the authority for implementation and enforcement of these additional Federal regulations.

We have reviewed the pertinent laws, rules and regulations of the State of Maryland and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS. Therefore, we hereby delegate our authority for the implementation and enforcement of the NSPS regulations to the State of Maryland as stated in the following paragraph.

Authority is delegated for all sources located or to be located in the State of Maryland subject to the Standards of Performance for New Stationary Sources promulgated by the Administrator of the EPA for the following additional source categories and sub-parts:

Glass manufacturing plant—CC
Stationary gas turbine—GG
Automobile and light duty truck surface
coating operation—MM
Ammonium sulfate manufacturing plant—PP
Asphalt processing and asphalt/roofing
manufacturing—UU
Lead acid/battery manufacturing—KK
Phosphate rock plant—NN
Industrial surface coating—large
appliances—SS
Surface coating of metal furniture—EE
Metal coil surface operation—TT
Graphic arts industry—publication
rotogravure printing—QQ
Revised Steam Generators—Da
Revised Petroleum Storage—Ka

This delegation is based upon the following conditions:

1. Quarterly reports which may be combined with other reporting information are to be submitted to EPA Region III, Air Enforcement Section (3AW12) by the State of Maryland and should include the following:

- Sources determined to be applicable during that quarter;
- Applicable sources which started operation during that quarter or which started operation prior to that quarter which have not been previously reported;
- The compliance status of the above, including the summary sheet from the compliance test(s); and
- Any legal actions which pertain to these sources.

2. Enforcement of the NSPS regulations in the State of Maryland will be the primary responsibility of the Maryland Air Management Administration (MAMA). Where the MAMA determines that such enforcement is not feasible and so notifies EPA, or where the MAMA acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of Maryland subject to NSPS regulations.

3. Acceptance of this delegation for the regulations for the source categories listed above does not commit the State of Maryland to request or accept delegation of other present or future standards and requirements. A new request for delegation will be required

for any additional standards or amendments to previously delegated standards.

4. The MAMA will not grant a variance from compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards. Should the MAMA grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The grant of such variance by the Agency shall also constitute grounds for revocation of delegation by EPA.

5. The MAMA and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a MAMA interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the MAMA.

6. If at any time there is a conflict between a regulation and Federal regulation 40 CFR Part 60 the Federal regulation must be applied if it is more stringent than that of the MAMA. If the MAMA does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

7. The MAMA will utilize the methods specified in 40 CFR Part 60 in performing source tests pursuant to these regulations. However, alternatives to continuous monitoring procedures and requirements may be acceptable upon concurrence by EPA as stipulated in 40 CFR 60.13.

8. If the Director of the Air and Waste Management Division determines that a MAMA program for enforcing or implementing the NSPS regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the MAMA.

9. Information shall be made available to the public in accordance with 40 CFR 60.9.

EPA procedures permit delegation of all the Administrator's authorities under 40 CFR Part 60 except for any which require rulemaking in the **Federal Register** to implement or where Federal overview is the only way to ensure national consistency in the application of standards. Accordingly, the following authorities are not delegable under Section 111 of the Clean Air Act, as amended:

1. *Performance Tests § 60.8 (b)(2) and (b)(3)*. In order to ensure uniformity and technical quality in the test methods used for enforcement of national standards, EPA will retain the authority to approve alternative and equivalent methods which effectively replace a reference method. This restriction on delegation does not apply to § 60.8(b)(1), which allows for approval of minor modifications to reference methods on a case-by-case basis.

Some subparts include general references to the authority in § 60.8(b) to approve alternative or equivalent standards. Examples include, but are not necessarily

limited to, §§ 60.11(b), 60.274(d), 60.396(a)(1), 60.396(a)(2), and 393(c)(1)(i). These references are reminders of the provisions of § 60.8 and are not separate authorities which can be delegated.

2. *Compliance with Standards and Maintenance Requirements, § 60.11(e)*. The granting of an alternative opacity standard requires a site-specific opacity limit to be adopted under 40 CFR Part 60.

3. *Subpart S, § 60.195(b)*. Development of alternative compliance testing schedules for primary aluminum plants is done by adopting site-specific amendments to Subpart S.

4. *Subpart Da, § 60.45a*. Commercial demonstration permits allow an alternative emission standard for a limited number of utility steam generators.

5. *Subpart GG, §§ 60.332(a)(3) and 60.335(a)(ii)*. These sections pertain to approval of customized factors (fuel nitrogen content and ambient air conditions, respectively) for use by gas turbine manufacturers in assembly-line compliance testing. Since each approval potentially could affect emissions from equipment installed in a number of States, the decision-making must be maintained at the Federal level to ensure national consistency. Notice of approval must be published in the **Federal Register**.

6. *Equivalency Determinations, Section 111(h)(3) of the Clean Air Act*. Approval of alternatives to any design, equipment, work practice, or operational standard [e.g., §§ 60.114(a) and 60.302(d)(3)] is accomplished through the rulemaking process and is adopted as a change to the individual subpart.

7. *Innovative Technology Waiver, Section 111(j) of the Clean Air Act*. Innovative technology waivers must be adopted as site-specific amendments to the individual subpart. Any applications of questions pertaining to such waivers should be sent to the Director, Air and Waste Management Division Region III. [States may be delegated the authority to enforce waiver provisions if the State has been delegated the authority to enforce NSPS].

8. *Determination of Construction or Modification (Applicability), Paragraph § 60.5*. In order to ensure uniformity in making applicability determinations pertaining to sources, EPA will retain this authority. The delegated agency may exercise judgement based on the Compendium of Applicability determinations issued by EPA annually, and updated quarterly.

Any applicability determinations not explicitly treated in the EPA Compendium must be referred to EPA for a determination. Also, any determinations made by the State agency based on the Compendium must be sent to EPA for informational purposes in

order for EPA to maintain national consistency.

A Notice announcing this delegation will be published in the **Federal Register** in the near future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the above-mentioned Federal NSPS regulations by sources located in the State of Maryland should be submitted to the Maryland Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, in addition to EPA Region III. Any original reports which have been or may be received by EPA Region III will be promptly transmitted to the MAMA.

Since this delegation is effective immediately, there is no requirement that the MAMA notify EPA of its acceptance. Unless EPA receives from the MAMA written notice of objections within ten (10) days of receipt of this letter, the Maryland Air Administration will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

Thomas P. Eichler,

Regional Administrator.

Effective immediately, all applications, reports, and other correspondence required under the NSPS regulations for glass manufacturing plants (Subpart CC), stationary gas turbines (Subpart GG), automobile and light-duty truck surface coating operations (Subpart MM), ammonium sulfate manufacture (Subpart PP), asphalt processing and asphalt roofing manufacture (Subpart UU), lead-acid battery manufacturing plants (Subpart KK), phosphate rock plants (Subpart NN), industrial surface coating: Large appliances (Subpart SS), surface coating of metal furniture (Subpart EE), metal coil surface coating (Subpart TT), graphic arts industry: Publication rotogravure printing (Subpart QQ), electric utility steam generating units for which construction commenced after September 18, 1978 (Subpart Da), and storage vessels for petroleum liquids constructed after May 18, 1978 (Subpart Ka), should be sent to the Maryland Air Management Administration (address above) rather than to the EPA Region III Office in Philadelphia.

The Office of Management and Budget has exempted this delegation from the

requirements of Section 3 of Executive Order 12291.

(Sec. 111(c), Clean Air Act (42 U.S.C. 7411(c)))

Dated: October 14, 1983.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 83-34454 Filed 12-28-83; 8:45 am]

BILLING CODE 6550-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chap. 101

[FPMR Temp. Reg. D-70, Supp. 1]

Work Space Management Plans; Correction

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This document corrects two tables and includes a form which was omitted in the temporary regulation on work space management plans which was published in the **Federal Register**, October 3, 1983 (48 FR 45111). Temporary Regulation D-70, Supplement 1, requires executive agencies to make optimum use of work space and related furnishings, to acquire only the minimum work space and related furnishings needed for known and verified mission requirements, and to excess unneeded property to the maximum extent feasible. The supplement also promulgates additions and changes to data elements of the world-wide inventory, establishes quarterly reporting of changes to the world-wide inventory, Part 101-3, and also provides new procedures for identifying and reporting excess automated data processing and telecommunications equipment.

FOR FURTHER INFORMATION CONTACT: Arthur O. Barton, Office of Real Estate (PZD), (202) 535-8120.

Dated: December 21, 1983.

Ray Kline,

Acting Administrator of General Services.

The following tables I-A and III of FPMR Temp. Reg. D-70, Supp. 1 are corrected as follows:

BILLING CODE 6820-23-M

FPMR Temp. Reg. D-70, Supp. 1
Appendix A

Agency _____
Date _____
Contact _____
Tele# _____

TABLE I-A
Initial Report on
Combined Utilization Rate
Section One

<u>Office Personnel (1)</u>			
	<u>As of 10/1/80</u>	<u>As of 3/31/83</u>	<u>Projected 9/30/84</u>
Personnel in GSA Assigned Space			
Personnel in Agency Controlled Space			
Total Personnel in Office (2) Space			
<u>Office Space</u>			
GSA Assigned Space (Sq. Ft.)			
Agency Controlled Space (Sq. Ft)			
Total Office Space			
<u>Utilization Rate (3)</u>			
GSA Assigned Space			
Agency Controlled Space			
Combined Utilization Rate			
Personnel in Exempted Office Space (4)			

- (1) As defined in FPMR Temp. Reg. FPMR D-70, Sec 101-16.003(1).
 (2) Includes personnel reported in exempted space.
 (3) Square footage divided by number of personnel.
 (4) Number of personnel in exempted office space reported on Table I.

The following GSA Form T-845, Vacancy Space Report, which was omitted in FPMR Temp. Reg. D-70, Supp. 1 is added as follows:

VACANCY SPACE REPORT <i>(See Instructions on Reverse)</i>		1. <input type="checkbox"/> SUBMISSION <input type="checkbox"/> WITHDRAWAL		REPORTS CONTROL SYM JOL		
2. ADDRESS OF BUILDING, STRUCTURE, OR FACILITY (Include Street Address, City, County, State and Zip Code)						
3. LOCATION WITHOUT A STREET ADDRESS						
4. DESCRIPTION OF BUILDING, STRUCTURE, OR FACILITY						
5. DESCRIPTION OF SPACE WITHIN A BUILDING, STRUCTURE, OR FACILITY						
NO. (A)	TYPE OF SPACE (B)	DESCRIPTION (C)	SQUARE FOOTAGE (D)	ANNUAL FAIR RENTAL PER SQ. FT. (E)	IF) DATES OF AVAILABILITY	
					FROM	TO
6. DEPARTMENT/AGENCY CONTACT			TELEPHONE NUMBER			
NAME (First and Last)			DEPARTMENT OR AGENCY			
GENERAL SERVICES ADMINISTRATION						

INSTRUCTIONS FOR COMPLETING VACANT SPACE REPORT

- Item 1 Check the appropriate box at the top of the form to indicate a submission or a withdrawal of a previously submitted report
- Item 2. Self-explanatory.
- Item 3. For buildings in small towns or the countryside, give an approximate location in reference to a city or landmark in addition to the state, city or county, and address. For example, the location of a building in Little Marais, Minn., could be given as "on the north shore of Lake Superior 50 miles northwest of Duluth, Minn."
- Item 4. To describe the type of building, structure, or facility, choose one of the terms in the lists below
- Item 5. To describe the space within a building, structure, or facility, use one of the terms in the Space list to identify each type of space and consecutively list all the types of space available in the building. For example, a building with office, storage, and computer space available would require a breakdown of three numbered line entries for adequate description. Four numbered line entries should be completed for a building with office, storage, and two separate computer spaces. If additional space is required, attach additional copies of this form and consecutively number the space descriptions. Description of space (Item 5C.) within a building should be 30 words or less and highlight the best features

Building or Space

Institutional
Hospital
School
Housing
Storage
Industrial
Service
Research and development
Office
Other

Structure or Facility

Harbor or port facility
Storage (other than buildings)
Industrial (other than buildings)
Service (other than buildings)
Research and development
(other than buildings)
Utility systems (heating, sewage,
water and electrical systems)
Miscellaneous military facilities
Other

- Item 6. Complete the "Department/Agency Contact" line and send the notification to
Project Director
Presidential Initiative Work Space Reform (PZD)
General Services Administration
Washington, DC 20405

NOTE. Incomplete listings or those containing obvious errors will be returned to the originating Department/Agency contact

41 CFR Part 101-11

[FPMR Amdt. B-56]

Changes in the Annual Summary of Records Holdings Report

AGENCY: National Archives and Records Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending its regulations to delete the requirement for Federal agencies to certify on Standard Form 136, Annual Summary of Records Holdings, the status of their records control schedules and to clarify that the summary report should include the volume of agency records in the physical custody of private businesses or firms (contractors). This information collection was reassessed during fiscal year 1982 and recommendations were made to reduce the burden and cost associated with the requirements of the National Archives and Records Service. The Office of Management and Budget recently approved the request submitted by the General Services Administration for reinstatement of this information collection. Standard Form 136 has been revised to delete the certification section and to eliminate the reporting of certain data on summary reports submitted to the National Archives and Records Service.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda N. Brown, Acting Assistant Archivist for Federal Records Centers (202-724-1614).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-11

Advisory committees, Archives and records, Classified information, Freedom of Information, Government property management, Interagency reports,

Micrographics, National Archives and Records Service, Privacy, Records and information management, Word processing.

PART 101-11—RECORDS MANAGEMENT

1. The authority citation for Part 101-11 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 405(c)).

2. Section 101-11.102-7 is revised to read as follows:

§ 101-11.102-7 Annual summary of records holdings.

Each Federal agency shall submit to the National Archives and Records Service within 30 days after the close of each fiscal year a summary of its records holdings, including the volume of agency records in the physical custody of private businesses or firms (contractors), on Standard Form 136, Annual Summary of Records Holdings (see § 101-11.4901). Instructions for preparing the report are on the reverse side of the form. A separate Standard Form 136 shall be submitted for each agency, bureau, service, or other organizational unit to which the National Archives and Records Service has assigned a record group number. If an organizational unit lacks such a number, its holdings shall be included with the next higher level having an assigned record group number. This report has been approved in accordance with § 101-11.11 and assigned Interagency Report Control Number 1094-GSA-AN. OMB Approval Number 3090-0031 is also assigned to this report.

3. Section 101-11.4901 is revised as follows:

§ 101-11.4901 Standard Form 136, Annual Summary of Records Holdings.

Note: The form in § 101-11.4901 is filed as part of the original document and does not appear in the Federal Register. An initial distribution of the form has been sent to agency records officers. Additional supplies of the form must be obtained by submitting a requisition in FEDSTRIP format to the GSA Regional Office providing support to the requesting agency.

(National Stock Number (NSN) 7540-00-634-4094)

Dated: November 29, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-34411 Filed 12-28-83; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 408, 409, 418, 420, 421, and 489

Medicare Program; Hospice Care

Correction

In FR Doc. 83-33331, beginning on page 56008, in the issue of Friday, December 16, 1983, make the following corrections:

1. On page 56024, in the second column, in the second paragraph, in the last line, the OMB No. should read "0938-0302".

2. On page 56028, in the third column, in § 418.50(e), in the fifth line, "arrangement in" should read "arrangement for inpatient care is described in".

3. On page 56032, in the first column, in § 418.100(l), in the first and second lines "Pharmaceutical hospice service." Should read "Pharmaceutical services."

4. On page 56034, in the second column, in § 418.308(b), in the first line, "1966" Should read "1986".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6579]

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 fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction,

Federal Insurance Administration, (202) 287-0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 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 fourth 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 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 fifth 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 notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the

required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, 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 noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

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
Region I					
Connecticut: New London	Noank Fire District	090129B	Sept. 25, 1973, emergency; Sept. 17, 1980, regular; Jan. 5, 1984, suspended.	Feb. 21, 1975 and Sept. 17, 1980.	Jan. 5, 1984
Massachusetts: Bristol	New Bedford, city of	255216B	Feb. 25, 1972, emergency; July 6, 1973, regular; Jan. 5, 1984, suspended.	July 9, 1976	Do.
Region II					
New Jersey:					
Somerset	Bedminster, township of	340427B	July 26, 1974, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	July 26, 1974 and June 24, 1977.	Do.
Sussex	Byram, township of	340557A	July 31, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Feb. 28, 1975	Do.
Monmouth	Deal, borough of	340292B	Jan. 14, 1972, emergency; Mar. 5, 1976, regular; Jan. 5, 1984, suspended.	Jan. 14, 1972, Feb. 21, 1975 and Mar. 5, 1976.	Do.
Ocean	Lavallette, borough of	340379D	Sept. 11, 1970, emergency; June 11, 1971, regular; Jan. 5, 1984, suspended.	June 11, 1971, July 1, 1974 and Apr. 16, 1976.	Do.
Hunterdon	Lebanon, township of	340510A	July 1, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Jan. 31, 1975	Do.
Monmouth	Long Branch, city of	340307C	Mar. 17, 1972, emergency; May 5, 1976, regular; Jan. 5, 1984, suspended.	May 31, 1974, May 5, 1976 and Jan. 13, 1978.	Do.
Ocean	Mantoloking, borough of	340383B	Jan. 14, 1972, emergency; Sept. 30, 1977, regular; Jan. 5, 1984, suspended.	May 31, 1974 and Sept. 30, 1977.	Do.
Ocean	Seaside Park, borough of	345319D	Dec. 11, 1970, emergency; Aug. 13, 1971, regular; Jan. 5, 1984, suspended.	Aug. 17, 1971, July 1, 1974, Sept. 5, 1975 and Mar. 19, 1976.	Do.
New York:					
Wayne	Macedon, town of	361230C	Sept. 26, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Dec. 20, 1974, Sept. 10, 1976 and Jan. 14, 1977.	Do.
Saratoga	Mechanicville, city of	360721B	July 1, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Apr. 5, 1974 and June 11, 1976.	Do.
Dutchess	Poughkeepsie, city of	360222B	May 1, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	June 28, 1974 and July 9, 1976.	Do.

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
Saratoga	Round Lake, village of	360726B	July 29, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Apr. 12, 1974 and July 2, 1976.	Do.
Nassau	Valley Stream, village of	360495B	July 22, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Oct. 15, 1976.	Do.
Region III					
Delaware: Sussex	Unincorporated areas	100029C	Apr. 16, 1971, emergency; Oct. 6, 1976, regular; Jan. 5, 1984, suspended.	Dec. 13, 1974, Oct. 6, 1976 and Oct. 1, 1983.	Do.
Pennsylvania: Allegheny	Bridgeville, borough of	420018B	Oct. 5, 1974, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Feb. 8, 1974 and Apr. 9, 1976.	Do.
Bucks	Silverdale, borough of	42238A	Feb. 17, 1977, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Jan. 3, 1975.	Do.
Region IV					
South Carolina: Charleston	Unincorporated areas	455413E	June 30, 1970, emergency; Apr. 23, 1971, regular; Jan. 5, 1984, suspended.	Apr. 27, 1971, May 25, 1973, July 1, 1974, Nov. 12, 1976 and Oct. 1, 1983.	Do.
Charleston	North Charleston, city of	450042B	Oct. 5, 1973, emergency; Oct. 8, 1976, regular; Jan. 5, 1984, suspended.	Apr. 27, 1971, May 25, 1973, July 1, 1974 and Jan. 17, 1975.	Do.
Region V					
Illinois: Mason	Bath, village of	170464B	Mar. 4, 1979, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Dec. 17, 1983 and Apr. 16, 1976.	Do.
Gallatin	Junction, Village of	170245C	May 21, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Dec. 28, 1973, Sept. 26, 1975 and Jan. 25, 1980.	Do.
Dekalb	Sycamore, city of	170191B	June 25, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Apr. 5, 1974 and Jan. 9, 1976.	Do.
Indiana: Jackson	Unincorporated areas	180405B	Dec. 13, 1974, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Mar. 17, 1978.	Do.
Jackson	Medora, town of	180098B	May 11, 1976, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Nov. 23, 1973 and Dec. 26, 1975.	Do.
Ohio: Jefferson	Unincorporated areas	390294C	Feb. 2, 1977, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	June 10, 1977 and May 28, 1982.	Do.
Hamilton	Terrace Park, village of	390633C	Nov. 14, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Feb. 8, 1974, Oct. 8, 1976 and Aug. 12, 1977.	Do.
Ohio: Wood	Unincorporated areas	390809B	Mar. 16, 1977, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Feb. 17, 1978.	Do.
Wisconsin: Polk	Oscoda, village of	550336B	Aug. 20, 1974, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	May 25, 1974 and Feb. 13, 1976.	Do.
Region IX					
Nevada: Washoe	Reno, City of	320020B	Apr. 25, 1975, emergency; Jan. 5, 1984, regular; Jan. 5, 1984, suspended.	Mar. 29, 1974 and Apr. 1, 1977.	Do.

¹ Date certain Federal assistance no longer available in special flood hazard areas.

[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 Administrator, Federal Insurance Administration]

Issued: December 22, 1983.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 83-34439 Filed 12-28-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 22

[CC Docket No. 82-37; FCC 83-547]

Annual Filing of FCC Form 430; Abolishment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends §§ 21.11(a) and 22.11(a) of the Commission's Rules to no longer require licensees and permittees in the Domestic Public Fixed Radio Service and the Public Mobile Radio Service to report changes in their regulator profile on a periodic basis, pursuant to § 1.65 of the Rules. The other reporting requirement contained in §§ 21.11 and 22.11 remain unchanged however. In addition, FCC Form 430 (Common Carrier and Satellite Radio Licensee Qualification Report) is amended to eliminate and modify some

of its inquiries. Our intention is to reduce the paperwork burden imposed on carriers while continuing to obtain sufficient information from them to enable us to carry out our statutory responsibilities.

EFFECTIVE DATE: The effective date of the amendments is March 31, 1984.

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

FOR FURTHER INFORMATION CONTACT: Terrence E. Reideler, Domestic Radio Branch, Common Carrier Bureau (202) 634-1773.

List of Subjects in 47 CFR Parts 21 and 22.

Radio.

Report and Order

In re amendment of §§ 21.11(a) and 22.11(a) of the rules to abolish the annual filing of FCC Form 430; CC Docket No. 82-37.

Adopted: November 23, 1983.

Released: December 20, 1983.

By the Commission.

1. By Notice of Proposed Rulemaking, 47 FR 5732 (Form 430 NPRM), we explored possible revisions in the filing requirements of FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualification Report"). Form 430 is a three page report that seeks citizenship and other ownership information regarding various Commission common carrier and satellite licensees. See Appendix A, attached. We proposed that permittees and licensees in the Domestic Public Fixed and Public Land Mobile Radio Services no longer be required to file annually FCC Form 430. We reasoned that because §§ 21.11 and 22.11 of the Commission's Rules, 47 CFR 21.11, 22.11, require these carriers to keep current the information provided in FCC Form 430, the requirement that they also make an annual filing seemed to impose an unnecessary paperwork burden. In the Form 430 NPRM we also asked for comments as to possible changes that could simplify the form. Our intention was to reduce the paperwork burden imposed on carriers while continuing to obtain sufficient information from them to enable us to carry out our statutory responsibilities.

2. Comments were filed by 13 parties, representing both the Domestic Public Fixed and Public Land Mobile Radio Services. The commenters were: Times Mirror Cable Television, Inc. (Times Mirror); Microband Corporation of America (Microband); Western Union Telegraph Company (Western Union); ICS Communications (ICS); Contemporary Communications Corporation (Contemporary); Southern Pacific Communications Company (Southern Pacific); Telocator Network of America; the law firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi (Kadison)¹; RCA Global

Communications, Inc. (RCA Globcom); United States Independent Telephone Association (USITA); the law firm of Cole, Raywid & Braverman²; American Telephone and Telegraph Company (AT&T); and the law firm of Pepper & Corazzini.³

1. Reporting Requirements

3. There was unanimity among the comments as to the need to reduce the reporting requirements now imposed by §§ 21.11(a) and 22.11(a). There was some disagreement, however, as to the best way to accomplish this goal. Several of the commenters favor our suggestion that the burden be lightened by abolishing the annual reporting requirement. Pepper & Corazzini and ICS, on the other hand, propose that the periodic reporting requirement be abandoned. Pepper & Corazzini suggest that the carriers be required to make an annual filing, wherein they would advise the Commission of all the changes that had taken place during the preceding year. In those instances in which there was no change, the carrier would so notify the Commission with a post card, rather than submitting a new FCC Form 430. ICS suggests that carriers be required to report no more than once a year and then only if there has been a change in the information previously reported. Notice of changes, says ICS, could be made by letter rather than by submission of a new form.

4. In a similar vein Western Union and Times Mirror do not object to abandoning the routine annual filing requirement, but note that requiring a carrier to report every change in the composition of its officers, directors and stockholders within 30 days of its occurrence imposes an extraordinary burden on large, publicly held corporations. They propose that licensees and permittees be allowed to elect to file their FCC Form 430 on an annual basis, rather than each time there is a change. As another alternative, Times Mirror suggests inclusion of a new rule specifically providing that publicly held companies file annually.

5. Finally, AT&T says that it sees no need to file an annual FCC Form 430 when there has been no change in the

information already reported to the Commission. It adds, however, that a requirement that licensees and permittees report only substantial and significant changes as they occur may not keep the Commission abreast of those it regulates.⁴ AT&T sees a need to report relatively minor changes as well. AT&T says that unreported minor changes could have a cumulative effect of rendering our records hopelessly out of date and thereby impair our effectiveness. Consequently, AT&T recommends that we abolish the requirement that carriers routinely file an annual FCC Form 430, continue to require carriers to notify us each time a significant change has occurred and require that they file an annual FCC Form 430 in those cases in which there has been a change in the previous year of any information of file.

6. Considering all of the comments, we believe that the public interest would be better served if we were to abandon the periodic reporting obligation and retain a simplified annual reporting requirement. Such a requirement would not be burdensome, would be more administratively efficient, and would ensure that sufficient information is received to enable us to carry out our statutory obligations.

7. The comments have made it apparent that there is some doubt concerning when § 1.65 requires that information should be submitted on a periodic basis. To the extent that the confusion is created by the questions in FCC Form 430, we believe the confusion should be greatly diminished by the substantial simplification of FCC Form 430 that we adopt below. Furthermore, we have concluded that a yearly review by the carrier with a subsequent report is the best way to ensure that changes are made and that our records are substantially up-to-date. Under an annual reporting requirement all changes in prior responses will have to be updated; the filer will not be required to ascertain whether an updated FCC Form 430 is necessary in order to keep the form "substantially accurate and complete in all significant respects" as required by § 1.65.

8. We have, therefore, decided to amend §§ 21.11(a) and 22.11(a) of the Rules to require permittees and licensees to report all changes of the information called for in FCC Form 430 once a year.⁵ In those cases in which

¹ The firm represents AAA Mobilephone Service, Inc.; Answer, Inc. of San Antonio; Associated Telephone Answering Services System, Inc.; Beepercall; Blacker's Communications Division, Inc.; Kelley's Radio Telephone, Inc.; La Vergne's Telephone Answering Service; Monroe Radio Telephone Co.; Tel-A-Voice; Pine Mountain Communications, Inc.; MetroFone Communications, Inc.; Armour Radio Communications, Inc.; and Polito Communications, Inc.

² This firm represents Andrews Tower Rental, Inc.; East Texas Transmission Co.; Hi-Desert Microwave, Inc.; Pilot Butte Transmission Company, Inc.; Transponder Corporation; Transponder Corporation of Denver, Inc.; Tansiel Corporation; United Microwave Corp.; United Video, Inc.; and United Webco, Inc.

³ This firm represents Western Maryland Communications, Inc.; Penn Service Microwave Company, Inc.; Maine Microwave, Inc.; Service Electric Company; Mississippi Valley Microwave; and Southern Satellite Systems, Inc.

⁴ Microband noted in its comments that there should be some clarification as to what changes would be reported in a carrier's updated FCC Form 430.

⁵ This change in reporting requirements does not and cannot affect the licensees' statutory

there is no change from the preceding year, the carriers may so notify us by letter (which need not consist of more than one or two sentences). But, if there has been a change we will require a new FCC Form 430 with all the questions completed in full. Submitting a newly completed FCC Form 430 when there may have been a change in only one question may seem repetitious since the same objective could be accomplished with a simple amendment, but amendments and incorporations by reference can cause lengthy searches and confusion for the public and Commission staff. In addition, we note that FCC Form 430, as revised, consists only of 8 questions, most of which require only a checkmark response. On balance, we believe having accurate information in one place warrants the burden of filing a new form.

II. Changes in the FCC Form 430

9. Three commenters, Microband, USITA and Kadison, propose changes in the questions contained in FCC Form 430. All three have suggested changes in the subsections of question 6, which applies to corporate licensees and permittees. In addition, USITA questions the relevance of questions 7 and 8, and Microband suggests that we delete that portion of question 8 that requests information related to the "number of stations authorized to the licensee in each radio service."

10. Turning first to the proposals to amend the inquiries contained in question 6, Microband and Kadison believe that there is no need to require corporate carriers to furnish us with the addresses and occupations of their top 10 shareholders. Additionally, Microband suggests that we change our reporting requirement from the ten largest shareholders to those shareholders owning ten percent or more of the filer's stock. It believes that this standard would more accurately reflect the locus of control since carriers, especially smaller carriers, are often controlled by a few large shareholders, with the remaining shareholders holding only insignificant portions of the corporation's stock. USITA goes one step further and advocates that carriers be relieved of the requirement to furnish the names of their stockholders and their directors.

11. Microband and USITA also suggest some changes be made in

reporting the citizenship composition of these carriers. Microband says that the provisions of question 6(f)—(i) fully advise us of the citizenship makeup of a carrier. Therefore, there is no need to list the citizenship in other subsections of question 6.⁶ USITA would replace questions 6(f)—(i) with a simple affirmation that all parties are U.S. citizens. USITA also sees no need to identify the state in which a licensee is incorporated.

12. Finally, USITA argues that questions 7 and 8, which pertain to a carrier's character qualifications and ask for a listing of other Commission authorizations in which the carrier has an interest, are irrelevant as well as "unnecessarily intrusive." Microband partially shares USITA's concern, stating that in question 8 a carrier should only need to establish that it has other authorizations. It says that the present requirement of making a carrier keep a tally of all of its authorizations is an unreasonable burden.

13. We have reviewed each of the questions independently and have decided to delete several questions that, while not particularly burdensome, are not reviewed or considered on a routine basis by the staff in any of its regulatory functions. The following discusses each question that we propose to delete or change in the order in which they appear in the form.

14. Question 6(b) requires corporate filers to attach a copy of their articles of incorporation as an exhibit. This requirement was initially included so that the staff could determine whether the corporation was authorized to provide common carrier service. We have found that a question in this regard is rarely raised. Most of the documents we have received use general language that would encompass any lawful business activity to describe the permissible business activities of the corporation. We also believe that it is unlikely that a corporation would invest the time and money required to secure a Commission authorization without first acquiring the corporate capacity to provide service. Thus, we believe that the burden imposed on the carriers by this requirement outweighs the possible regulatory benefits to be derived from it.⁷ Accordingly, we shall delete the requirement.⁸

⁶ These inquiries are made in question 6(c) and (e).

15. Question 6(c), about which several commenters complained, requires that the filer attach an exhibit listing the names, addresses, principal occupations, and citizenship of the 10 largest shareholders. We too think that there is little need for a corporate licensee or permittee to inform us of the occupations of its principal shareholders. We do not, however, think that the obligation of a corporate carrier to furnish us with the names and addresses of these shareholders is irrelevant. We have a duty to know who is controlling the licensees and permittees. Consequently we should have at our disposal the names of their major shareholders. Moreover, the names of principals are of little use unless there is some means of verifying their identities, communicating with them if necessary, and of verifying citizenship. This is why we must also know their citizenship and addresses. Accordingly, the requests for stockholders' primary occupations in question 6(c) will be deleted. Regarding other changes in this question, we also agree that a change in the present reporting requirement is in order. We see little need to know the identities of shareholders who hold or vote less than 10 percent of the filer's stock. It seems improbable that these persons would be in a position to exert a significant influence over a carrier, especially in the smaller firms that comprise the bulk of the licensees.

16. Question 6(e) asks whether the filer is directly or indirectly controlled by any other corporation and, if so, it asks various questions about the controlling corporation. We believe that it is important for the Commission to be informed that the filer is controlled by another corporation in order to ascertain the relationship between licensees and to enable the staff to contact more easily the principals when there are questions or problems involving the filer. In addition, such information would facilitate public access to information about our licensees. Thus, we believe

⁷ We do not, however, agree with USITA that there is no need for a corporate carrier to identify the state in which it is incorporated. We are informed by our staff that this is a matter of frequent inquiry by members of the public. Although the information sought is primarily to enable us to carry out our regulatory functions, we believe that the needs of the public should also be considered. Accordingly, we are persuaded that this information, which is easily furnished, should continue to be supplied.

⁸ We believe that our rationale regarding articles of incorporation is equally applicable to partnership agreements, thus we shall delete question 5(e) as well.

responsibilities [see, e.g., 47 U.S.C. § 310(d), which provides that control of a station license may not be transferred without prior Commission authorization].

that filers should continue to be required to give the name and address of the controlling entity, a brief description of its business, and whether officers, directors or major stockholders are aliens. Thus we have decided, in accordance with our discussion above, that subsection (2) be modified to require that a filer submit the names, addresses and citizenship of those shareholders holding or voting 10 percent of the filer's stock, and that subsection (5), which calls for the controlling corporation's Articles of Incorporation, be eliminated.

17. Turning to Question 7, which relates to the filer's qualifications to hold a radio license, we have concluded that three subsections of question 7(a) should be modified in order to make these inquiries more pertinent for judging a filer's qualifications.⁹ First, we believe that subsection (iii) of question 7(a), which is a general inquiry concerning antitrust and security law convictions, should be narrowed to seek information relating to anticompetitive behavior solely in the field of radio and wire line communications. Next we would amend subsection (iv), which asks whether the filer has been found

guilty of any felony or crime involving moral turpitude, to require notification of only felony convictions. We believe that "moral turpitude" is too vague to use as a standard in assessing a filer's qualifications. Finally, we believe that the portion of question 7(a)(v), which asks if the filer has ever been adjudged mentally incompetent should be eliminated. This inquiry is not made in similar forms used in other radio services. See, e.g., FCC Form 402A (Private Radio Bureau) and FCC Form 323 (Mass Media Bureau). The remainder of question 7, relating to whether an authorization has ever been denied or revoked, and to actions pending against the filer will remain as is.

18. Finally, USITA has argued that question number 8, relating to control of other radio stations, is irrelevant and unnecessarily intrusive. Microband objects to the present requirement of making a carrier keep track of each authorization in which it has an interest. We agree with Microband that the requirement that the filer note the approximate number of stations authorized to the licensee in each radio service serves no useful purpose. At the same time, however, it is important for us to know the relationship between licensees and thus whether any subsidiary of the filer is a carrier regulated by the Commission. It is also often important for the staff to determine in what other services a filer may have interests. For example, if a

question arises as to the qualifications of a licensee, the question may well exist regarding all of the licenses held. It would be necessary to have a listing of all licensee corporations which the filer owns or controls. We shall revise question 8 to ask only name of the licensee in which the filer has an interest, the licensee's relation to the filer and the radio services involved.

III. Ordering Clauses

19. Accordingly, it is hereby ordered, that, pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 21.11(a) and 22.11(a) of the Commission's Rules and Regulations are amended, as set forth in the attached appendices,¹⁰ effective March 31, 1984.

20. It is further ordered, that FCC Form 430 is amended, as set forth in the attached appendices, effective March 31, 1984.

21. It is further ordered, that the proceeding in Docket No. 82-37 is terminated.

FEDERAL COMMUNICATIONS
COMMISSION.

William L. Tricarico,

Secretary.

BILLING CODE 4712-01-M

⁹ These changes do not preclude the Commission from considering any other allegations or information that interested parties may bring to our attention which may bear upon the filer's qualifications to become or remain a licensee. By these changes, we intend only to indicate those matters which we believe should be brought to our attention on a routine basis.

¹⁰ Appendix A is a copy of present Form 430. The portions being revised are underlined. Appendix B is a copy of the new form. Appendix C includes the editorial changes we are making to Parts 21 and 22 of the Rules.

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	YES	NO
d. If a partnership, under the laws of what State (or other jurisdiction) is it organized?		
e. If a partnership, attach as Exhibit I, one copy of the partnership agreement.		
6. If Filer is a corporation, answer the following:		
a. Under laws of what State (or other jurisdiction) is it organized?		
b. Attach as Exhibit II, a copy of the Articles of Incorporation unless a current copy has been previously filed. (If previously filed, indicate the filing date.)		
c. Attach as Exhibit III the names, addresses, principal occupations, and citizenship of the 10 largest stockholders owning of record and/or voting the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or the class of beneficiaries.		
d. List below, or attach in Exhibit IV, the names of the officers and directors of the Filer.		
e. Is the Filer directly or indirectly controlled by any other corporation?		
f. Is any officer or director of the Filer an alien?		
g. Is more than one-fifth of the capital stock of the Filer owned by aliens or their representatives, or a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country?		
h. Is the Filer directly or indirectly controlled: (1) by any other corporation of which any officer or more than one-fourth of the directors are aliens, or (2) by any foreign corporation or corporation of which more than one-fourth of the capital stock is owned or voted by aliens or their representatives?		
i. If any answer to questions (f), (g) or (h) is "Yes", attach as Exhibit VI, a statement identifying the aliens or foreign entities, their nationality, their relationship to the Filer, and the percentage of stock they own or vote.		

APPENDIX A

FCC Form 400 February 1983	FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D. C. 20554	Approved by OMB 3060-0105 Expires 1/31/84
COMMON CARRIER AND SATELLITE RADIO LICENSE QUALIFICATION REPORT		
INSTRUCTIONS		
A. The "Filer" of this report is defined to include: (1) An applicant, where this report is submitted in connection with applications for common carrier and satellite radio authority as required for each application, or (2) A licensee or permittee, where this report is required by the Commission's Rules to be submitted on an annual basis. B. Submit an original and one copy (a separate original only) to the Federal Communications Commission, Washington, D. C. 20554. If more than one radio service.		
1. Business name and address (street number, city, state, ZIP Code) of Filer's principal office:		
2. List the common carrier and satellite radio services in which Filer has applied or is a current licensee or permittee:		
3. If this report supersedes a previously filed report, specify its date:		
4. Filer is (check one): <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other (Specify)		
5. If Filer is an individual (sole proprietorship) or partnership, answer the following:		
a. Full legal name and residential address (street number, city, state & ZIP Code) of individual or partners:		
b. Is individual or each member of a partnership a citizen of the United States?		
c. Is individual or any member of a partnership a representative of an alien or of a foreign government?		
	YES	NO

APPENDIX B

FCC Form 400 - February 1983

7. a. Has the Filer or any person directly or indirectly controlling the Filer: *

	YES	NO
i. Had any application for any FCC authorization denied on grounds of qualifications or character?		
ii. Had any radio station license or permit revoked by the FCC or any Federal Court?		
iii. Been found guilty within the last 10 years by a court or administrative agency of any civil or criminal violations of the security or anti-trust laws of the United States or of any state, territorial, or local government?		
iv. Been found guilty by any court of any felony or any other crime involving moral turpitude?		
v. Been adjudged bankrupt or mentally incompetent by any court?		
b. Is there now pending in any court or administrative body against the Filer, or any person or organization having final control, any action involving any of the matters referred to in the questions in (a) above?		
c. If any of the answers to questions (a) or (b) are "Yes", submit as Exhibit VII a brief statement concerning the persons and matters involved, identifying the court or agency, the proceeding (by date, file number, or report citation), the facts upon which the proceeding is (or was) based, the nature of the offense committed or alleged, and the status or disposition of the matter.		
8. Is the Filer, directly or indirectly, through stock ownership, contract or otherwise, currently interested in the ownership or control of any other radio stations licensed by this Commission?		

If "Yes", submit as Exhibit VIII, the name of each such licensee, the licensee's relation to the Filer, and the approximate number of stations authorized to the licensee in each radio service.

CERTIFICATION

This report constitutes a material part of any application which cross-references it, and all statements in the attached exhibits are a material part hereof. The ownership information contained in this report does not constitute an application for, or Commission approval of, any transfer of control or assignment of radio facilities. The undersigned, individually and for the Filer, hereby certifies that the statements made herein are true, complete and correct to the best of his (her) knowledge and belief, and are made in good faith.

Dated this _____ day of _____, 19____

Filer _____
(Print name and title with that shown on page 1)

By _____
(Signature)

Title _____

HELPFUL FILER STATEMENTS MADE ON THIS APPLICATION WILL BE MADE AVAILABLE TO THE PUBLIC AND APPROXIMATELY: Call, Title 18, Section 10027 AND FOR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT. Call, Title 47, Section 15.001(d)

NOTICE TO INDIVIDUALS REQUIRED BY PRIVACY ACT OF 1974 AND THE FEDERAL INFORMATION COLLECTION ACT OF 1980

The solicitation of personal information requested in this form is to determine if you are qualified to become a licensee in a common carrier or satellite radio service pursuant to the Communications Act of 1934, as amended. No authorization can be granted unless all information requested is provided. Response to the information requested is required to obtain the requested authorization.

* Item 7 revised in Appendix B.

FCC Form 400
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

COMMON CARRIER AND SATELLITE RADIO LICENSEE QUALIFICATION REPORT

INSTRUCTIONS

A. The "Filer" of this report is defined to include:
(1) An applicant, where this report is submitted in connection with applications for common carrier and satellite radio authority as required for such applications; or (2) A licensee or permittee, where this report is required by the Commission's Rules to be submitted on an annual basis.
B. Submit an original and one copy (sign original only) to the Federal Communications Commission, Washington, D. C. 20554. If more than one radio service:
1. Business name and address (street number, city, state, ZIP Code) of Filer's principal office:

2. List the common carrier and satellite radio services in which Filer has applied or is a current licensee or permittee:

3. If this report supersedes a previously filed report, specify its date:

4. Filer is (check one):
 Individual Partnership Corporation
 Other (Specify) _____

5. If Filer is an individual (sole proprietorship) or partnership, answer the following:
a. Full legal name and residential address (street number, city, state & ZIP Code) of individual or partner:

b. Is individual or each member of a partnership a citizen of the United States?

YES	NO

c. Is individual or any member of a partnership a representative of an alien or of a foreign Government?

YES	NO

Appendix C

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

1. In § 21.11, paragraph (a) shall be revised as follows:

§ 21.11 Miscellaneous forms shared by all domestic public radio services.

(a) *Licensee qualifications.* FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualification Report") shall be filed annually, no later than March 31 for the end of the preceding calendar year by licensees and permittees for each radio service (except for individual mobile subscribers to a common carrier service), if public service was offered at any time during the preceding year. Each annual filing shall include all changes of information required by Form 430 that occurred during the preceding year. In those cases where there has been no change in any of the required information the carrier, in lieu of submitting a new form, may so notify the Commission by letter.

PART 22—PUBLIC MOBILE RADIO SERVICES

2. In § 21.11 paragraph (a) shall be revised as follows:

§ 22.11 Miscellaneous forms shared by all domestic public radio services.

(a) *Licensee qualifications.* FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualification Report") shall be filed annually, no later than March 31 for the end of the preceding calendar year by licensees and permittees for each radio service (except for individual mobile subscribers to a common carrier service), if public service was offered at any time during the preceding year. Each annual filing shall include all changes of information required by Form 430 that occurred during the preceding year. In those cases where there has been no change in any of the required information the carrier, in lieu of submitting a new form, may so notify the Commission by letter.

INTERSTATE COMMERCE COMMISSION**49 CFR Ch. X**

[Ex Parte No. MC-165 (Sub-No. 1)]

Motor Contract Carriers of Property; Proposal To Allow Issuance of Permits Authorizing Industry-Wide Service

AGENCY: Interstate Commerce Commission.

ACTION: Final policy statement and change in the Form OP-1.

SUMMARY: The Commission has issued a final policy statement that motor contract carriers of property may file applications to serve an entire industry or industries as a class [the notice of proposed policy statement and proposed change in the Form OP-1 was published at 48 FR 24397, June 1, 1983]. The Commission has also adopted minor modifications in the OP-1 application form consistent with the policy statement. The final policy statement and changes to the application form comport with 49 U.S.C. 10923(d)(2) and will allow contract carriers to expand and make their operations more efficient without filing multiple applications to serve more than one shipper.

EFFECTIVE DATE: This action becomes effective December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Mark S. Shaffer, (202) 275-1723

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

Rather than revise the entire Form OP-1 (Revised 11/83) at this time, the Commission will issue a revised page 5 to Form OP-1 (Revised 11/83) application form which incorporates the changes adopted here. The revised page 5 to Form OP-1 can be obtained from: Office of the Secretary, Publications Room, Rm B-221, Washington, DC 20423, 202-275-7833.

The revised page 5 to Form OP-1 will also be distributed to all Commission offices which stock Form OP-1.

The public can continue to use the current Form OP-1 (Revised 11/83) that they currently have on hand. All applicants requesting contract carrier authority should include either the revised page 5 that the Commission will

provide or a facsimile page 5 on which these changes have been made. Common carriers are not affected by this change so they do not need to add the revised page 5 or make the revisions.

When the Commission exhausts its supply of OP-1 Forms (Revised 11/83), a new form which incorporates these revisions will be issued. A public notice will be issued when the completely-revised Form OP-1 is available.

(49 U.S.C. 10923 (c)(f), (d) (1) and (2), and 5 U.S.C. 553)

Decided: December 7, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

James H. Bayne,
Acting Secretary.

[FR Doc. 83-34437 Filed 12-28-83; 9:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 25****Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs; Schedule of Moving Expense Allowances; Individuals and Families**

AGENCY: Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to reflect changes in the moving expense schedule for displaced persons in the States of Indiana, New York, and Pennsylvania.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peter Nyberg, Relocation Division, Office of Right-of-Way (202-426-0117); or Reid Alsop, Office of the Chief Counsel (202-426-0800), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours Monday-Friday from 7:45 a.m. to 4:15 p.m. ET.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense schedule. To ensure statewide uniformity among all agencies operating under the Act, General Services Administration Regulations, governing agency implementation of the Act, 41 CFR Part 101-6, provide in § 101-6.105-1 that

moving expense schedules maintained by the respective State highway departments shall be used, and that the schedules will be approved on a current basis and disseminated by the Federal Highway Administration (FHWA).

The regulations of the Office of the Secretary, 49 CFR 25.153, implementing the Uniform Act, direct the FHWA to establish and maintain the moving expense schedule in Appendix A to Part 25 of Title 49. The purpose of this amendment is to revise the current schedule, which was published on July 14, 1983, (48 FR 32171) to reflect changes in the moving expense schedules that have been made by the following States:

Tables I—Personalty—Indiana, New York, and Pennsylvania.

Table II—Mobile Homes—New York.

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. The FHWA has also determined that the changes

reflected in this action will have only minimal economic impact on the affected States, individuals, and families. Accordingly, further regulatory evaluation is not required and, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities, since the moving expense schedules are used only by individuals and families. They are not used by businesses.

Neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under the Administrative Procedure Act because the FHWA finds for good cause that such actions would be impracticable, unnecessary and would not result in the receipt of useful information.

In consideration of the foregoing, the Department of Transportation hereby amends Title 49, Code of Federal Regulations, Subtitle A, Part 25,

Appendix A, Tables I and II as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4601; 41 CFR 101-6.105-1; 49 CFR 25.153; 23 CFR 740.55(c))

List of Subjects in 49 CFR Part 25

Highway and roads, Land acquisition, Relocation assistance.

Issued on: December 22, 1983.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

PART 29—[AMENDED]

Appendix A—[Amended]

Appendix A, Tables I and II, to Part 25, are revised to read as follows:

Appendix A—Moving Cost Schedules

TABLE I.—PERSONALTY

State	Occupant provides furniture									Occupant does not provide furniture		
	Number of rooms of furniture									First room	Each additional room	
	1	2	3	4	5	6	7	8	9			
Alabama	\$100	\$150	\$200	\$250	\$300						(1)	(1)
Alaska	75	150	200	250	275	\$300					15	15
Arizona	50	100	150	200	250	300					25	15
Arkansas	100	160	200	240	280	300					50	30
California	75	100	150	200	250	300					25	15
Colorado	120	180	240	300							30	20
Connecticut	50	90	140	170	230	280	\$300				15	15
Delaware	60	100	140	180	220	260	300				25	15
District of Columbia	100	135	170	210	250	290	300				35	15
Florida	100	150	200	250	300						50	50
Georgia	140	180	220	260	300						50	10
Guam	48	85	120	168	205	240	300				10	10
Hawaii	65	100	135	175	215	255	295	\$300			45	30
Idaho	60	100	140	180	220	260	300				20	10
Illinois	50	100	150	200	250	300					25	15
Indiana	60	120	180	240	300						25	15
Iowa	75	140	195	240	275	300					30	12
Kansas	60	120	180	240	300						30	10
Kentucky	65	130	195	260	300						35	25
Louisiana	100	140	180	220	260	300					40	15
Maine	50	100	150	200	250	300					25	15
Maryland	100	150	200	250	300						20	10
Massachusetts	60	130	150	190	225	250	275	300			25	15
Michigan	65	130	180	240	300						50	10
Minnesota	75	150	200	250	300						30	15
Mississippi	100	150	200	250	300						50	25
Missouri	50	100	150	200	250	300					25	10
Montana	100	150	200	250	300						50	25
Nebraska	50	100	150	200	250	300					30	10
Nevada	100	150	200	250	300						50	25
New Hampshire	100	150	190	230	270	300					25	15
New Jersey	80	140	195	245	300						25	15
New Mexico	158	235	300								(2)	(2)
New York	120	170	215	260	300						50	25
North Carolina	70	110	160	210	260	300					40	30
North Dakota	75	125	150	200	250	275	300				30	15
Ohio	50	100	150	200	250	300					30	10
Oklahoma	100	150	200	250	300						40	15
Oregon	75	150	225	300							25	25
Pennsylvania	100	170	240	300							35	35
Puerto Rico	75	120	165	210	255	300					25	25
Rhode Island	70	140	210	250	275	300					25	10
South Carolina	150	250	300								40	30
South Dakota	100	150	200	250	300						50	15
Tennessee	75	100	150	200	250	300					25	15
Texas	95	140	190	245	300						50	25
Utah	75	100	130	155	180	210	240	270	\$300		25	15
Vermont	100	150	190	230	270	300					25	15
Virginia	60	105	150	195	240	300					40	10

TABLE I.—PERSONALTY—Continued

State	Occupant provides furniture									Occupant does not provide furniture		
	Number of rooms of furniture									First room	Each additional room	
	1	2	3	4	5	6	7	8	9			
Virgin Islands	105	150	195	240	275	300					35	35
Washington	100	150	200	250	300						25	25
West Virginia	100	150	200	250	300						40	20
Wisconsin	80	150	210	260	300						50	30
Wyoming	80	120	180	240	260	300					40	20

¹ Furnished units including sleeping rooms. Occupant does not own furniture. First room, \$35; 2 rooms, \$55; 3 rooms, \$80; 4 rooms, \$100; 5 rooms, \$125; 6 rooms, \$145; each additional room, \$20.

² Furnished units including sleeping rooms. Occupant does not own furniture. First room, \$68; 2 rooms, \$129; 3 rooms, \$160; 4 rooms, \$193; 5 rooms, \$224; 6 rooms, \$256; 7 rooms, \$288; 8 rooms, \$300.

TABLE II.—MOBILE HOMES

State	Miles (kilometres)		Area—Square feet (square metres)		Width—Feet (metres)		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Alabama			0 (0)	200 (18.6)			165
			200 (18.6)	400 (37.2)			225
			400 (37.2)	600 (55.8)			285
			600 (55.8)				300
Alaska *							300
Arizona			0 (0)	300 (27.9)			150
			300 (27.9)	400 (37.2)			200
			400 (37.2)	500 (46.5)			250
			500 (46.5)				300
Arkansas					0 (0)	10 (3)	200
					12 (3.7)		300
California							(¹)
Colorado							(¹)
Connecticut *					0 (0)	8.5 (2.6)	100
					8.5 (2.6)	10.5 (3.2)	150
					10.5 (3.2)	12.5 (3.8)	200
					12.5 (3.8)		250
Delaware			0 (0)	400 (37.2)			100
			400 (37.2)	600 (55.8)			150
			600 (55.8)	800 (74.4)			200
			800 (74.4)	1,000 (93)			250
			1,000 (93)				300
Florida *							300
Georgia *							300
Guam			0 (0)	300 (27.9)			130
			300 (27.9)	400 (37.2)			180
			400 (37.2)	500 (46.5)			210
			500 (46.5)	600 (55.8)			240
			600 (55.8)	700 (65.1)			270
			700 (65.1)				300
Hawaii			0 (0)	300 (27.9)			130
			300 (27.9)	400 (37.2)			180
			400 (37.2)	500 (46.5)			210
			500 (46.5)	600 (55.8)			240
			600 (55.8)	700 (65.1)			270
			700 (65.1)				300
Idaho			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	800 (74.4)			250
			800 (74.4)				300
Illinois	0 (0)	24 (38.6)			0 (0)	8.5 (2.6)	100
					8.5 (2.6)	10.5 (3.2)	150
					10.5 (3.2)	12.5 (3.8)	200
					12.5 (3.8)		250
	24 (38.6)	50 (80.5)			0 (0)	8.5 (2.6)	150
					10.5 (3.2)	10.5 (3.2)	200
					12.5 (3.8)	12.5 (3.8)	250
							300
Indiana					0 (0)	8.5 (2.6)	150
					8.5 (2.6)	10.5 (3.2)	185
					10.5 (3.2)	12.5 (3.8)	250
					12.5 (3.8)		300
Iowa	0 (0)	25 (40.2)			0 (0)	8 (2.4)	130
					8 (2.4)	10 (3)	150
					10 (3)	12 (3.7)	190
					12 (3.7)		230
	25 (10.2)	50 (80.5)			0 (0)	8 (2.4)	140
					8 (2.4)	10 (3)	170
					10 (3)	12 (3.7)	200
					12 (3.7)		300
Kansas			0 (0)	200 (18.6)			80
			200 (18.6)	400 (37.2)			160
			400 (37.2)	600 (55.8)			240
			600 (55.8)				300
Kentucky *					0 (0)	8 (2.4)	285
					8 (2.4)		300
Louisiana					0 (0)	10 (3)	200
					10 (3)	12 (3.7)	250

TABLE II.—MOBILE HOMES—Continued

State	Miles (kilometres)		Area—Square feet (square metres)		Width—Feet (metres)		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
Maine					12 (3.7)	14 (4.3)	300
					0 (0)	8 (2.4)	150
					8 (2.4)	10 (3)	200
					10 (3)	12 (3.7)	250
					12 (3.7)		300
Maryland			0 (0)	200 (18.6)			110
			200 (18.6)	400 (37.2)			140
			400 (37.2)	600 (55.8)			165
			600 (55.8)	800 (74.4)			195
			800 (74.4)	1,000 (93)			220
			1,000 (93)	1,200 (111.6)			250
			1,200 (111.6)				300
Massachusetts			0 (0)	200 (18.6)			80
			200 (18.6)	400 (37.2)			140
			400 (37.2)	600 (55.8)			200
			600 (55.8)				300
Michigan					0 (0)	8 (2.4)	145
					8 (2.4)	10 (3)	230
					10 (3)	12 (3.7)	280
						12 (3.7)	300
Minnesota *					0 (0)	8.24	200
					8 (2.4)		300
Mississippi			0 (0)	300 (27.9)			200
			300 (27.9)	400 (37.2)			250
			400 (37.2)				300
Missouri			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	800 (74.4)			250
			800 (74.4)				300
Montana *					0 (0)	10 (3)	150
					10 (3)	12 (3.7)	200
					12 (3.7)	14 (4.3)	225
						14 (4.3)	275
Nebraska			0 (0)	400 (37.2)			100
			400 (37.2)	600 (55.8)			150
			600 (55.8)	800 (74.4)			200
			800 (74.4)	1,000 (93)			250
			1,000 (93)				300
Nevada					0 (0)	8 (2.4)	200
					8 (2.4)		300
New Hampshire *							300
New Jersey			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	800 (74.4)			250
			800 (74.4)				300
New Mexico *-*	0 (0)	20 (32.2)			0 (0)	8.5 (2.6)	206
					8.5 (2.6)	10.5 (3.2)	279
					12.5 (3.8)	10.5 (3.2)	288
					12.5 (3.8)		300
	20 (32.2)	50 (80.5)			0 (0)	8.5 (2.6)	243
					8.5 (2.6)	10.5 (3.2)	288
					10.5 (3.2)		300
New York			0 (0)	300 (27.9)			200
			300 (27.9)	500 (46.5)			250
			500 (46.5)				300
North Carolina *-*					0 (0)	12 (3.7)	200
					12 (3.7)		300
North Dakota *			0 (0)	200 (18.6)			125
			200 (18.6)	400 (37.2)			175
			400 (37.2)	600 (55.8)			225
			600 (55.8)	800 (74.4)			275
			800 (74.4)				300
Ohio *	0 (0)	10 (16)	0 (0)	320 (29.8)			130
			320 (29.8)	500 (46.5)			150
			500 (46.5)	840 (78.1)			170
			840 (78.1)	1,120 (104.2)			205
			1,120 (104.2)				250
	10 (16)	25 (40.2)	0 (0)	320 (29.8)			135
			320 (29.8)	500 (46.5)			155
			500 (46.5)	840 (78.1)			190
			840 (78.1)	1,120 (104.2)			220
			1,120 (104.2)				275
	25 (40.2)	50 (80.5)	0 (0)	320 (29.8)			145
			320 (29.8)	500 (46.5)			165
			500 (46.5)	840 (78.1)			200
			840 (78.1)	1,120 (104.2)			250
			1,120 (104.2)				300
Oklahoma					0 (0)	10 (3)	250
					10 (3)		300
Oregon			0 (0)	200 (18.6)			100
			200 (18.6)	600 (55.8)			200
			600 (55.8)				300
Pennsylvania *					0 (0)	8 (2.4)	225
					8 (2.4)	10 (3)	250
Rhode Island					10 (3)	12 (3.7)	275
					12 (3.7)		300

TABLE II.—MOBILE HOMES—Continued

State	Miles (kilometres)		Area—Square feet (square metres)		Width—Feet (metres)		Allowance dollars
	More than	But not more than	More than	But not more than	More than	But not more than	
South Carolina *					0 (0)	10 (3)	175
					10 (3)	12 (3.7)	200
					12 (3.7)	14 (4.3)	250
					14 (4.3)		300
South Dakota *					0 (0)	10 (3)	100
Tennessee *					10 (3)		150
Texas					0 (0)	8.5 (2.6)	175
					8.5 (2.6)	10.5 (3.2)	235
					10.5 (3.2)		300
Utah *	0 (0)	10 (16)			0 (0)	8 (2.4)	140
					8 (2.4)	10 (3)	145
					10 (3)	12 (3.7)	165
					12 (3.7)		200
					0 (0)	8 (2.4)	145
	10 (0)	25 (40.2)			8 (2.4)	10 (3)	155
					10 (3)	12 (3.7)	175
					12 (3.7)		225
					0 (0)	8 (2.4)	150
					8 (2.4)	10 (3)	160
25 (40.2)	50 (80.5)			10 (3)	12 (3.7)	190	
				12 (3.7)		250	
						300	
Vermont *						150	
Virginia			0 (0)	200 (18.5)			200
			200 (18.6)	400 (37.2)			250
			400 (37.2)	600 (55.8)			300
			600 (55.8)	800 (74.4)			300
Washington *						150	
West Virginia			0 (0)	300 (27.9)			200
			300 (27.9)	450 (41.9)			250
			450 (41.9)	550 (51.2)			300
			550 (51.2)				150
Wisconsin					0 (0)	8 (2.4)	200
					8 (2.4)	10 (3)	250
					10 (3)	12 (3.7)	300
					12 (3.7)		135
Wyoming *					0 (0)	8.5 (2.6)	165
					8.5 (2.6)	10.5 (3.2)	210
					10.5 (3.2)	12.5 (3.8)	300
					12.5 (3.8)		

* Width to 8' (2.4 m) Length 40' (12.2 m) \$200. Over 40' (12.2 m) 300. Width over 8' (2.4 m) 300.

† Under 8' (2.4m) x 40' (12.2m).—Unskirted \$150. Over 8' (2.4m) x 40' (12.2m)—\$300.

‡ Plus \$50 for expandable trailer.

§ \$300 for double trailer.

¶ Escort fee included.

** Personality only. Width—under 10 feet (3 m), \$60; 10 feet (3 m), \$70; 12 feet (3.7m) and over \$100; doubles, \$175.

†† \$50 for extras.

‡‡ All trailers.

§§ All mobile homes.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

Permits To Take Golden Eagle Nests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Because of conflicts between preservation of golden eagle nests and resource development or recovery operations, particularly surface coal mining activities in the western States, Congress amended the Eagle Protection Act to authorize the Secretary of the Interior to issue regulations that permit the taking of golden eagle nests found on the site of those operations under certain circumstances. Under that authority, the Service amends its

regulations under the Eagle Protection Act to permit the taking (i.e., collection, molestation, disturbance, or destruction) of golden eagle nests during resource development or recovery operations when the nests are inactive if the taking is compatible with the preservation of the area nesting population of golden eagles. Little or no long-term impact on area nesting populations of golden eagles is expected as a result of this action.

EFFECTIVE DATE: January 30, 1984.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published in the *Federal Register* on January 3, 1980 (45 FR 809), which invited comments for 60 days ending

March 3, 1980. After a draft environmental assessment was prepared in conjunction with the proposed rule to comply with the National Environmental Policy Act of 1969, the comment period was reopened on October 9, 1981 (46 FR 49925), for 30 more days ending on November 9, 1981. Comments were received from individuals, businesses, government agencies, and environmental groups. The following summarizes the comments by topic and the Service's response to those comments, including any changes made in the proposed rule as a result.

Summary and Analysis of Comments

1. Scope and applicability of the rule

Many comments recognized the need for the rule and supported its basic principle: resource development or recovery operations are legitimate and appropriate activities entitled to limited relief from the prohibitions of the Eagle Protection Act, but the Service must remain committed to the preservation of

the golden eagle. From that starting point the comments on the proposal diverged. Some found too little relief offered, others found too little emphasis on preservation.

The Service looked at the language of the 1978 amendment and the congressional intent underlying its passage when the proposal was drafted. The 1978 amendment, which amended section 2 of the Eagle Protection Act (16 U.S.C. 668a), reads as follows:

Provided further, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations. Sec. 8, Pub. L. 95-616, 92 Stat. 3114 (16 U.S.C. 668a).

Beyond the language of the amendment, little guidance was offered by Congress. But in view of the exhaustive and careful enumeration of prohibited acts elsewhere in § 668a of the Eagle Protection Act, the use of this precise terminology by Congress in the 1978 amendment was intentional. Therefore, the Service believes it correctly interpreted the amendment to apply only to golden eagles, and then only to the taking of golden eagle nests.

From the number of comments addressing the possible situations when a permit is needed to take golden eagle nests, it appears the Service needs to clarify the "taking" prohibition. The definition of "take" in section 4 of the Eagle Protection Act (16 U.S.C. 668c) includes "collect, molest, or disturb." In the context of this rule, these terms prohibit removal, destruction, or some other act that physically affects a golden eagle nest. That is, a nest is not "taken" during a resource development or recovery operation until it is removed, destroyed, or physically damaged or disturbed. But the very same operation that does not take a nest may result in a prohibited taking of a golden eagle. Whether a particular act results in the taking of a golden eagle is not within the scope of this rule.

Several comments stated that the rule should limit the geographic area in which permits would be available to Montana, Wyoming, Colorado, and Utah, four States where there are both healthy golden eagle populations and extensive surface coal mining operations. When read in the context of the Service's proposed definition of "resource development or recovery operation," others saw a broad, nationwide, open-ended permit system (a "generic" permit as one comment called it). Other comments recommended that the Service prescribe limits on the types of resource

development or recovery operations eligible for a permit.

The major portion of golden eagle nest-resource development or recovery conflicts do occur in the coal mining areas of Montana, Wyoming, Colorado, and Utah. This region has a high resident population of golden eagles that nest on existing coal leases or lands with a high potential for recovery of strippable coal. The Service has adequate breeding population data for most of the energy impact areas in the western U.S. In Wyoming, where intensive sampling has been conducted, the breeding population is estimated at 3,000 pairs (an average of one pair per 33 square miles). On coal resource study areas, golden eagle densities have been as high as one breeding pair per 12 square miles.

Golden eagle nest-resource development or recovery conflicts also occur in association with such operations as logging; oil and gas exploration; and construction of dams, roads, pipelines and electric transmission or distribution lines. Compared to development of western coal reserves, however, these operations are less commonly associated with such conflicts due to either the restricted nature of the activity or the lower density of eagles found within the development area.

After reviewing the legislative history of the 1978 amendment, particularly the Senate report on the amendment (Sen. Rep. No. 95-1175, 95th Cong. 2nd Sess. 6-7 (1978)), the Service has not found any Congressional intent to limit the permit to the suggested four-State area or narrow the types of resource development or recovery operations eligible for a permit. The legislative history provides examples which illustrate, but do not exhaust, the situations creating the need for a permit. As before, Congress was quite careful in its choice of words, preferring the term "resource development or recovery operations" rather than a less inclusive one.

Comments from Weyerhaeuser Company and Georgia-Pacific Corporation challenged the Service's authority to regulate the taking of golden eagle nests on non-Federal lands. Weyerhaeuser Company stated, "without clear statutory language, or at least clear legislative intent, Federal statutes should not be interpreted as requiring Federal permits for development of non-Federal land. We are not aware of any legislative history associated with the (Eagle Protection Act) . . . suggesting that development of non-Federal lands would be regulated. . . ."

As the Supreme Court noted in *Andrus v. Allard*, 444 U.S. 51 (1979), the Eagle Protection Act is a conservation statute containing prohibitions designed to prevent the destruction of bald and golden eagles. Exceptions to the general prohibitions of the Act are explicit and carefully circumscribed. Among the broad proscriptive provisions the Eagle Protection Act enumerates to achieve this goal is one that prohibits the taking of golden eagle nests. The 1978 amendment provides the Service with the authority to permit the taking of golden eagle nests in limited circumstances. What this final rule provides is a mechanism for applying conditions on the grant of a privilege to a permittee. It enables the Service to perform its statutory mandate while an operator engages in an otherwise prohibited activity. The development of non-Federal lands is only incidentally regulated and only when a permit to take a golden eagle nest is required.

In summary, under this rule: (1) No permit is needed by an operator to conduct a resource development or recovery operation in the vicinity of an inactive nest, as that term is defined by the rule and discussed below, as long as the nest is not removed, destroyed, or physically molested or disturbed; (2) no permit may be issued to an operator by the Service under 50 CFR 22.25 to take either golden eagles or their eggs; (3) a permit to take a golden eagle nest when the nest is inactive does not authorize the permittee to take either golden eagles or their eggs; and (4) whether an operator has unlawfully taken golden eagles or their eggs during an operation will be decided by the Service on a case-by-case basis, as the Service has done in the past.

2. Definitions

The Service proposed a framework for issuing permits to take golden eagle nests that sought to distinguish between "active" and "inactive" nests. The Service proposed to define an "active nest" to mean one that "[a] is known to have been used by nesting golden eagles in at least 1 of the 3 preceding years; or [b] is in such condition that prior use by golden eagles can be verified, and little or no repair will be required for its subsequent use by golden eagles for nesting purposes. No definition of "inactive nest" was included.

Even though 2 types of nests were distinguished, the Service proposed to permit the taking of either type, but only if the particular nest was not under construction or occupied and the taking was compatible with the preservation of the regional population of golden eagles.

The restriction against taking any nest under construction or occupied prevented the Service from authorizing the possible taking of one or more golden eagles for purposes not permitted under the Eagle Protection Act (16 U.S.C. 668a). Because the Act (16 U.S.C. 668a) also requires an investigation to be conducted before a permit is issued to determine whether the taking is "compatible with the preservation of the . . . golden eagle," the proposal focused on the impact the taking would have on the regional population of golden eagles, to account for geographic differences in the total golden eagle population and to enable the Service to issue a permit tailored to the needs of a particular regional population.

The comments revealed confusion over these definitions, most notably, the definition of "active nest." For one thing, it was argued that the definition departed from the common meaning of that term.

The final rule now defines the following terms: "area nesting population," "golden eagle nest," "inactive nest," "nesting attempt," "person," and "resource development or recovery." These definitions should overcome any confusion caused by the definitions used in the proposal or caused by terms that were left undefined.

The term "inactive nest" is defined to mean "a golden eagle nest that is not currently used by golden eagles as determined by the absence of any adult, egg, or dependent young at the nest during the 10 days before the nest is taken." Any golden eagle nest is a candidate for a permit. But unlike the proposal, all golden eagle nests are seen as nests at which nesting attempts may occur. Cliffs, rock outcrops, and trees are used as nest sites by golden eagles. Many nest sites may be used by successive generations. Golden eagles have shown a propensity to construct a number of alternate nests in any one locale. Some may be used for nesting at varying intervals; some may be irregularly visited and maintained. Frequently, 3 or more of these alternate or satellite nests are constructed by a single pair of golden eagles. Although alternate nest sites may be selected because of early nesting failure, generally nesting attempts only occur at one site per year.

The definition of "inactive nest," which replaces the proposed definition for "active nest," identifies almost the same golden eagle nests that are eligible for a permit. That is, under the proposal, any "active nest" could be taken, except one that was under construction or occupied. Under the final rule, only an

"inactive nest" may be taken, and by definition it must not be currently used by golden eagles.

The term "area nesting population" replaces the term "regional population." An area nesting population is "the number of pairs of golden eagles known to have made a nesting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest." The area nesting population is calculated with reference to the golden eagle nest proposed to be taken. Therefore, no two area nesting populations are identical.

A "nesting attempt" is "any activity by golden eagles involving egg-laying and incubation as determined by the presence of an egg attended by an adult, an adult in incubation posture, or other evidence indicating recent use of a golden eagle nest for incubation of eggs or rearing of young."

The Service, under the final rule, will consider the impact of a resource development or recovery operation on the area nesting population of golden eagles before a permit is issued. Within a 10-mile radius of a golden eagle nest proposed to be taken, an area of approximately 314 square miles, it is economically feasible to determine breeding population levels using available methods. The survey area is believed adequate for determining whether a representative portion of the breeding population exists in the vicinity of a resource development or recovery operation. Nesting densities of golden eagles most commonly range from 25 to 35 square miles per breeding pair. Thus, 9 to 13 pairs would be expected to occupy an area within a 10-mile radius of a nest.

One comment suggested that the Service use the term "area of contiguous habitat" in place of the term "regional." Such a substitution may create more confusion than it eliminates by requiring a decision to be made on the boundaries of the contiguous habitat. It also fails to recognize that concentrated populations may occur in adjacent habitats, causing inaccurate population estimates.

For clarity, the term "golden eagle nest" also is defined. The definition of "resource development or recovery" remains virtually unchanged, except for the addition of "power transmission lines" within the final definition.

One term, "mitigation measures," remains undefined. Several mitigation measures are identified in the rule, but these are not meant to preclude any others suggested by an applicant or later developed by the Service. A more detailed discussion of mitigation measures appear directly below under the topic of permit administration.

3. Permit Administration

The final rule permits the taking (i.e., destruction, removal, or physical molestation or disturbance) of golden eagle nests which conflict with a resource development or recovery operation when the nests are inactive (as defined), if the taking is compatible with the preservation of the area nesting population of golden eagles (i.e., that number of pairs of golden eagles that made a nesting attempt during the preceding 12 months within a 10-mile radius of any nest taken under the permit).

Anyone planning a resource development or recovery operation is encouraged to involve the Service as early as possible to resolve any potential interference by golden eagle nests. However, any permits issued before the commencement of an operation are contingent upon the performance of the activities which require a permit. If a planned operation fails, the permit is no longer needed and becomes invalid. Again, even after a permit is issued a nest may only be taken when it is inactive.

Applicants are encouraged to suggest "mitigation measures," which may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any golden eagle nest taken under permit, or establishing one or more artificial nest sites. The Service has identified only three types of mitigation measures, but more are possible. The goal of any mitigation measure is to encourage golden eagles to reoccupy the site of the resource development or recovery operation.

The final environmental assessment recommends restoration of disturbed lands for long-term reoccupancy by eagles as the principal mitigation measure. The relocation of nests taken under permit during the resource development or recovery operation or the establishment of artificial nest sites should be considered only when there is an expectation of long-term benefit to the area nesting population of golden eagles.

Closing access roads upon completion of an operation to minimize human contact, leaving a source of uncontaminated water, some reforestation, and removal of unnecessary power lines are additional reclamation actions which could be taken. In addition, other applicable laws may require an applicant to follow a particular manner of reclamation, which may also act as a mitigation measure.

Therefore, several variables will determine the terms and conditions, if any, imposed upon a permit by the Service: (1) The type of resource development or recovery operation, and (2) whether or not the operation is subject to pre-existing mitigation measures.

Some operations, such as surface mining and timbering, involve extensive surface disruption and a corresponding degradation of nesting and foraging habitat. Others, such as oil drilling, involve minor, isolated surface disruption and minimal degradation of habitat. However, mitigation measures are already required by other laws for most operations involving extensive surface disruption. The permanent program performance standards promulgated under the Surface Mining Control and Reclamation Act (SMCRA), which apply to almost all coal exploration and surface coal mining and reclamation operations, require mine operators to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable. Restoration of land and water resources is ranked as a priority in reclamation planning. Further, Criterion Number 11 of the unsuitability criteria developed under Section 522 of SMCRA states:

(1) *Criterion Number 11.* A bald or golden eagle nest or site on Federal lands that is determined to be active and an appropriate buffer zone of land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exceptions.* A lease may be issued if:

- (i) It can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or
- (ii) The surface management agency, with the concurrence of the Fish and Wildlife Service, determines that the golden eagle nest(s) will be moved.
- (iii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected. 43 CFR 3461.1(k).

By setting aside buffer zones, this criterion may eliminate the Service's concern for land reclamation as a mitigation measure when an inactive nest is taken in the vicinity of an active nest protected under this criterion.

Under the National Forest System administered by the Department of

Agriculture, the management of fish and wildlife habitat to maintain viable populations of existing native vertebrate species is given extensive consideration.

As indicated above, most golden eagle nest-resource development or recovery operation conflicts are expected to occur on lands which are subject to land reclamation regulations imposed by other laws. For the most part, these requirements should facilitate the restoration of disturbed eagle nesting and foraging habitat. The Service's concern is the the applicant identify those mitigation measures already incorporated into the project plan.

The construction of artificial nest sites was proposed by the Service as one type of mitigation measure. Whether the establishment of such sites should be treated as a mitigation measure was a question specifically put to the public. The Service's position at that time was that an artificial nest site has the potential to be subsequently used by golden eagles and is therefore a mitigation measure, particularly when no other suitable nest sites exist.

Since the rule was proposed, the Service has conducted research on the effects of golden eagle nest manipulations. These have included nest relocation, construction of artificial nest sites and studies of the breeding biology of golden eagles to understand more fully factors of nest site attachment and the short and long-term effects of nest removal on golden eagle populations of varying sizes. A Research Information Bulletin published by the Service entitled "Resolving Conflicts Between Energy Development and Nesting Golden Eagles" (No. 82-28, August 1982), an interim report containing provisional data, summarized some of the results to date. This provisional data indicates that golden eagles will use relocated nest sites. Similar successes were detailed by several commenters. Of course, merely moving a nest may be of limited benefit if other factors necessary to the birds' well-being and normally found within the home range are absent.

Whether feasible mitigation measures compatible with the resource development or recovery operation are available to encourage golden eagles to reoccupy the resource development or recovery site is only one of a number of issuance criteria that must be addressed before a permit may be issued. Other factors are:

1. Whether the applicant can reasonably conduct the resource development or recovery operation in a manner that avoids taking any golden eagle nest;
2. The total number of inactive golden eagle nests proposed to be taken;

3. The size of the area nesting population of golden eagles;

4. Whether suitable nesting and foraging habitat unaffected by the resource development or recovery operation is available to the area nesting population of golden eagles to accommodate any golden eagles displaced by the resource development or recovery operation; and

5. Whether the area nesting population is widely dispersed or locally concentrated.

The comments concerning permit administration raised a number of issues. One from the Department of the Interior's Office of Surface Mining (OSM) requested the Service (FWS) to include a consultation requirement whenever a resource development or recovery operation is subject to the Surface Mining Control and Reclamation Act (SMCRA) because of a potential conflict between the permanent program regulations promulgated under the SMCRA and the possible inability of an operator to obtain a permit to take a golden eagle nest located on a highwall created by surface mining. The comment specifically noted:

The Surface Mining Act requires that all highwalls be eliminated, and the pertinent regulations require that reclamation be done contemporaneously with mining. 30 U.S.C. 1205(b)(3); 30 CFR 816.100. In addition, the regulations specify certain time requirements for the completion of backfilling and grading. 30 CFR 816.101. These time requirements obviously conflict with any prohibition against "taking" an eagle nest.

For the most part, the conflict between the FWS and OSM regulations can be resolved under a provision in 30 CFR 816.201 which allows for an extension of time if the coal operator demonstrates to the appropriate regulatory authority that additional time is necessary to complete the required backfilling and grading. (The Office of Surface Mining anticipates that a majority of the State programs will provide for a similar extension of time so most likely the same flexibility will be available.)

Of course, such a determination must be made on a case-by-case basis, but nonetheless there is room for flexibility so that an operator is not caught in the dilemma of trying to decide whether to destroy the eagle nest or to disregard the reclamation requirements.

Presently, the extension of time provision appears to alleviate any conflict between the regulations.

[But] OSM can foresee lengthy delays in reclamation work. The Office of Surface Mining proposes that FWS add a consultation requirement to 50 CFR 22.25(c). In other words, the FWS Regional Director conducting the permit approval investigation should at least consult with the appropriate OSM Regional Director on the matter before denying a permit.

The Service agrees with the need for consultation, but not with the need to place the consultation requirement in the regulations. Such a requirement is more appropriate for internal procedures needed to administer the permit.

Already the Service has taken steps to:

1. Develop in-house procedures for handling requests, including consultation requirements with appropriate State and Federal officials. Service officials responsible for collecting and assessing the biological information required in decisionmaking will also be identified.

2. Assemble pertinent available data on golden eagles nesting density, such as nest locations and existing nests at which nesting attempts occurred, and organize this material for use by officials designated to issue permits. Priority is assigned to areas already being mined and those scheduled for leasing or development.

3. Develop a research/inventory program to provide solid data on which to base Service golden eagle management decisions. Accelerating leasing and development schedules make it essential that the Service undertake a major effort over the next two to three years, with the interim decisions available for updating operating plans on at least an annual basis.

4. Develop a golden eagle management plan to (a) provide an overview of the situation confronting management of the western populations of the golden eagle; (b) identify Service principles and goals regarding management of this species; (c) provide a comprehensive list of nationwide objectives for the species and identify problems confounding immediate attainment of these objectives; and (d) briefly outline potential Service strategy to implement management of the species.

One comment sought additional information on the criteria the Service will use to determine whether a permit is really necessary. In light of the Service's somewhat restrictive interpretation of the term "take" as it applies to nests, the instances when nests must be taken generally will occur during resource development or recovery operations involving extensive surface disruption. The applicant must demonstrate a need for the permit beyond mere convenience. Whether an applicant can reasonably conduct the resource development or recovery operation in a manner that avoids taking any golden eagle nest requires the Service to look at the cost and technical feasibility of alternatives while assessing the impact of the taking on the

area nesting population if the taking is permitted.

As stated earlier, applicants are encouraged to contact the Service as soon as possible during a resource development or recovery operation when a permit may be needed to take a golden eagle nest. There are several reasons. One, the Service needs at least 30 days to process an application. Under extraordinary circumstances, a permit may be issued sooner, but the Service does not have the administrative capability to issue permits immediately, as one commenter requested. Two, applicants must provide the data used to calculate the area nesting population of golden eagles. During each 12-month period there is only a brief "window" when golden eagles can be observed making nesting attempts. Otherwise the Service must rely on other evidence of nesting attempts, such as earlier observations or the presence of certain material at a nest, to determine whether a nesting attempt occurred at a particular nest. If the applicant and Service cooperate, together they can make the necessary determination of the area nesting population and terminate the determination when sufficient data has been obtained. For some areas the Service already has accumulated most of the required data. A limited update is all that may be necessary. In areas where no data has been collected, information is available from the Service in order to plan population studies and conduct aerial transects.

One comment objected to limiting the duration of permits to 1 year because of the time it takes to plan a major operation. The Service agrees and has extended the tenure of permits to 2 years. The permits, of course, are renewable under 50 CFR 13.24. Any mitigation measures included in a permit as a condition must be completed before the expiration of the permit, unless the permit is renewed. When mitigation measures are included, the Service will describe them in enough detail to enable both the permittee and the Service to determine whether they have been satisfied.

One commenter wanted to know how the Service will resolve disputes. Two areas of potential conflict between an applicant and the Service may be administratively appealed by the applicant under 50 CFR 13.32. These new appeal procedures were published by the Service in the *Federal Register* on July 15, 1982 (47 FR 30786). Under these procedures, an applicant can appeal denial of a permit, or appeal the mitigation measures imposed by the Service when a permit is issued.

Two minor additional changes have been made. Permittees are required to notify the Service before a nest is taken, not after, so the Service can have a last minute opportunity to inspect the nest. Also, applicants are asked if they are willing to collect a nest, instead of destroy it in instances where the Service would authorize destruction, to enable members of the scientific community to have access to the nest for various scientific studies. In no case does a nest taken under permit become the property of the permittee.

Finally, as noted below, the Service has made a Finding of No Significant Impact under the National Environmental Policy Act of 1969 (NEPA) based upon an environmental assessment completed in conjunction with this final rule. Another environmental document is not required for each permit that is issued. Under section 1.4 of Appendix 1 to Chapter 6, Part 516 of the Departmental Manual (516 DM 6, App. 1.4), the issuance of these permits is categorically excluded from the NEPA process.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this final rule by the Service's Office of Migratory Bird Management. It is on file in the Division of Law Enforcement, 1375 K Street, NW., Suite 300, Washington, D.C., and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT." This assessment forms the basis for the decision that this final rule is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Paperwork Reduction Act

The information collection requirement contained in 50 CFR 22.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0022.

Determinations of Effects

In accordance with Executive Order 12291 entitled "Federal Regulation," the Department of the Interior has determined that this final rule is not major. Certain resource development or recovery operations in limited areas should become feasible where interference from golden eagle nests

exists. No figures are available on the number of permits likely to be issued, but the permits will be free and relatively easy to secure. Any costs associated with the permit should be more than offset by the fact that an impediment has been removed from a resource development or recovery operation. This determination is discussed in more detail in a Determination of Effects prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT." Because this rule was proposed before January 1, 1981, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

Primary Author

The primary author of this final rule is John T. Webb, Division of Law Enforcement, Fish and Wildlife Service.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting requirements, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50, *Code of Federal Regulations* is amended as follows:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for Part 13 reads as follows:

Authority: 18 U.S.C. 42; sec. 4, Pub. L. 97-79, 95 Stat. 1074 (16 U.S.C. 3373); sec. 7, Pub. L. 97-79, 95 Stat. 1078 (16 U.S.C. 3376); sec. 3, Pub. L. 65-186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712); sec. 2, 54 Stat. 251, as amended by sec. 9, Pub. L. 95-616, 92 Stat. 3114 (16 U.S.C. 668a); sec. 102, 76 Stat. 73 (19 U.S.C. 1201). "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"; sec. 9(d), Pub. L. 93-205, 87 Stat. 893 (16 U.S.C. 1538(d)); sec. 6(a)(1), Pub. L. 96-159, 93 Stat. 1228 (16 U.S.C. 1537a); E.O. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112, sec. 101 Pub. L. 93-205, 87 Stat. 896, as amended by secs. 2 and 3, Pub. L. 94-359, 90 Stat. 3760; sec. 7, Pub. L. 96-359, 90 Stat. 911 and 912; sec. 5, Pub. L. 95-632, 92 Stat. 3760; sec. 7, Pub. L. 96-159, 93 Stat. 1230 (16 U.S.C. 1539); sec. 11, Pub. L. 93-205, 87 Stat. 897, as amended by sec. 6(4), Pub. L. 95-632, 92 Stat. 3761 (16 U.S.C. 1540(b)(2)(F)); sec.

13(d), 86 Stat. 905, amending 85 Stat. 480 (16 U.S.C. 742-1); Title I sec. 112, Pub. L. 92-522, 86 Stat. 1042, as amended by Title II, sec. 201(e), Pub. L. 96-470, 94 Stat. 2241 (16 U.S.C. 1382); 65 Stat. 290 (31 U.S.C. 483(a)).

§ 13.12 [Amended]

2. Amended § 13.12(b) by adding the following entry in numerical order under "Eagle permits:"

Take of golden eagle nests	22.25
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PART 22—EAGLE PERMITS

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

Authority: Sec. 2, Act of June 8, 1940, chapter 278, 54 Stat. 251; Pub. L. 87-844, 76 Stat. 1246; section 2, Pub. L. 92-535, 86 Stat. 1065; section 9, Pub. L. 95-616, 92 Stat. 3114 (16 U.S.C. 668a).

§ 22.3 [Amended]

4. Amend § 22.3 by adding the following definitions in alphabetical order:

"Area nesting population" means the number of pairs of golden eagles known to have a nesting attempt during the preceding 12 months within a 10-mile radius of a golden eagle nest.

"Golden eagle nest" means any readily identifiable structure built, maintained or occupied by golden eagles for propagation purposes.

"Inactive nest" means a golden eagle nest that is not currently used by golden eagles as determined by the absence of any adult, egg, or dependent young at the nest during the 10 days before the nest is taken.

"Nesting attempt" means any activity by golden eagles involving egg laying and incubation as determined by the presence of an egg attended by an adult, an adult in incubation posture, or other evidence indicating recent use of a golden eagle nest for incubation of eggs or rearing of young.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of any State or political subdivision of a State.

"Resource development or recovery" includes, but is not limited to, mining, timbering, extracting oil, natural gas and geothermal energy, construction of roads, dams, reservoirs, power plants, power transmission lines, and pipelines,

as well as facilities and access routes essential to these operations, and reclamation following any of these operations.

5. Add the following new § 22.25:

§ 22.25 Permits to take golden eagle nests.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing any person to take golden eagle nests during a resource development or recovery operation when the nests are inactive, if the taking is compatible with the preservation of the area nesting population of golden eagles. The information collection requirements contained within this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to the criteria established in this section for the issuance or denial of such permits. The obligation to respond is required to obtain or retain a permit.

(a) *Application procedure.* Applications for permits to take golden eagle nests must be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this chapter). Applications are only accepted from persons engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Each application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

(1) A description of the resource development or recovery operation in which the applicant is engaged;

(2) The number of golden eagle nests proposed to be taken;

(3) A description of the property on which the taking is proposed, with reference made to its exact geographic location. An appropriately scaled map or plat must be included which delineates the area of the resource development or recovery operation and identifies the exact location of each golden eagle nest proposed to be taken. The map or plat must contain enough detail so that each golden eagle nest proposed to be taken can be readily located by the Service.

(4) For each golden eagle nest proposed to be taken, the applicant must calculate the area nesting population of golden eagles and identify on an appropriately scaled map or plat the exact location of each golden eagle nest used to calculate the area nesting population unless the Service has sufficient data to independently calculate the area nesting population. The map or plat must contain enough details so that each golden eagle nest used to calculate the area nesting population can be readily located by the Service.

(5) A description of each activity to be performed during the resource development or recovery operation which involves the taking of a golden eagle nest:

(6) A statement with any supporting documents from ornithologists experienced with golden eagles or other qualified persons who have made on site inspections and can verify the applicant's calculation of the area nesting population;

(7) The length of time for which the permit is requested, including the dates on which the proposed resource development or recovery operation is to begin and end;

(8) A statement indicating the intended disposition of each nest proposed to be taken. Applicants should state whether they are willing to collect any nest for scientific or educational purposes; and

(9) A statement indicating any proposed mitigation measures that are compatible with the resource development or recovery operation to encourage golden eagles to reoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any inactive golden eagle nest taken, or establishing one or more nest sites. If the establishment of one or more nest sites is proposed, a description of the materials and methods to be used and the exact location of each artificial nest site must be included.

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this chapter, permits to take golden eagle nests are subject to the following additional conditions:

(1) Only inactive golden eagle nests may be taken.

(2) The permittee shall submit a report of activities conducted under the permit to the Director within ten (10) days following the permit's expiration;

(3) The permittee shall notify the Director in writing at least 10 days but

not more than 30 days before any golden eagle nest is taken;

(4) The permittee shall comply with any mitigation measures determined by the Director to be feasible and compatible with the resource development or recovery operation; and

(5) Any permit issued before the commencement of a resource development or recovery operation is invalid if the activity which required a permit is not performed.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take any golden eagle nest unless such taking is compatible with the preservation of the area nesting population of golden eagles. In making such determination, the Director shall consider the following:

(1) Whether the applicant can reasonably conduct the resource development or recovery operation in a manner that avoids taking any golden eagle nest;

(2) The total number of golden eagle nests proposed to be taken;

(3) The size of the area nesting population of golden eagles;

(4) Whether suitable golden eagle nesting and foraging habitat unaffected by the resource development or recovery operation is available to the area nesting population of golden eagles to accommodate any golden eagles displaced by the resource development or recovery operation;

(5) Whether feasible mitigation measures compatible with the resource development or recovery operation are available to encourage golden eagles to reoccupy the resource development or recovery site. Mitigation measures may include reclaiming disturbed land to enhance golden eagle nesting and foraging habitat, relocating in suitable habitat any golden eagle nest taken, or establishing one or more nest sites; and

(6) Whether the area nesting population is widely dispersed or locally concentrated.

(d) *Tenure of permits.* The tenure of any permit to take golden eagle nests is 2 years from the date of issuance, unless a shorter period of time is prescribed on the face of the permit. Permits may be renewed in accordance with Part 13 of this chapter.

Dated: March 10, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-34401 Filed 12-26-83; 9:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 215, 216, 222, 250, 253, 255, 256, 258, 259, 296, 401, 663, and 674

[Docket No. 31223-247]

Marine Mammals, Aid to Fisheries, Continental Shelf, Endangered Species, and Domestic Fishing Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendments.

SUMMARY: NOAA issues this final rule to amend regulations that do not display currently valid Office of Management and Budget (OMB) control numbers. Agencies are required under the Paperwork Reduction Act, to publish in the Federal Register OMB control numbers for each collection of information in codified regulations. The intended effect is to make it clear that the collection of information contained in a regulation has been approved by OMB.

EFFECTIVE DATE: December 30, 1983.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, 202-634-7432.

List of Subjects in 50 CFR Parts 215, 216, 222, 250, 253, 255, 256, 258, 259, 401, 663, and 674

Reporting and recordkeeping requirements.

Dated: December 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons stated in the Summary, 50 CFR Parts 215, 216, 222, 250, 253, 255, 256, 258, 259, 296, 401, 663, and 674 are amended as follows:

PART 215—PRIBILOF ISLANDS

1. The authority citation for Part 215 reads as follows:

Authority: Pub. L. 89-702, 80 Stat. 1001 [16 U.S.C. 1151-1187]; Reorganization Plan No. 4 of 1970, 84 Stat. 2090.

§§ 215.12 and 215.13 [Amended]

2. In §§ 215.12 and 215.13, place the parenthetical phrase "(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)" at the end of each respective section.

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

3. The authority citation for Part 216 reads as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

§§ 216.24, 216.31, and 216.33 [Amended]

4. In § 216.24, place the parenthetical phrase "(Approved by the Office of Management and Budget under control numbers 0648-0083 for paragraphs (b) and (c), 0648-0085 for paragraph (d), and 0648-0040 for paragraph (e) of this section)" at the end of that section; and in §§ 216.31 and 216.33, place the phrase "(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)" at the end of each respective section.

PART 222—ENDANGERED FISH OR WILDLIFE

5. The authority citation for Part 222 reads as follows:

Authority: Sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540).

§§ 222.11-2, 222.11-8, 222.12-7 and 222.23 [Amended]

6. In §§ 222.11-2 and 222.12-7, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0078)" at the end of each respective section; in § 222.11-8, place the phrase "(Approved by the Office of Management and Budget under control number 0648-0079)" at the end of that section; and in § 222.23, place the phrase "(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)" at the end of that section.

PART 250—FISHERIES LOAN FUND PROCEDURES

7. The authority citation for Part 250 reads as follows:

Authority: 70 Stat. 1121, as amended; 16 U.S.C. 742c, as amended, and Reorganization Plan No. 4 of 1970.

§§ 250.4 and 250.14 [Amended]

8. In §§ 250.4 and 250.14, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0133)" at the end of each respective section.

PART 253—COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT

9. The authority citation for Part 253 reads as follows:

Authority: Sec. 8, Commercial Fisheries Research and Development Act of 1964, 78

Stat. (16 U.S.C. 779a-779f), as modified by Reorganization Plan No. 4 of 1970, effective October 3, 1970 (35 FR 15627).

§ 253.3 [Amended]

10. In § 253.3, place the parenthetical phrase "(Approval by the Office of Management and Budget under control number 0648-0102 is pending)" at the end of that section.

PART 255—FISHING VESSEL OBLIGATION GUARANTEE PROGRAM PROCEDURES

11. The authority citation for Part 255 reads as follows:

Authority: Title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271-1279), and Reorganization Plan No. 4 of 1970, (86 Stat. 909).

§ 255.4 [Amended]

12. In § 255.4, place the parenthetical phrase "(Approval by the Office of Management and Budget under control number 0648-0012 is pending)" at the end of that section.

PART 256—FISHING VESSEL CONSTRUCTION DIFFERENTIAL SUBSIDY PROCEDURES**§§ 256.4 and 256.11 [Amended]**

13. The authority citation for Part 256 reads as follows:

Authority: Sec. 10, 74 Stat. 214, as amended; 46 U.S.C. 1410.

14. In § 256.4, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0090)" at the end of that section; and in § 256.11, place the phrase "(Approved by the Office of Management and Budget under control number 0648-0041)" at the end of that section.

PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

15. The authority citation for Subpart C of Part 258 is revised to read as follows:

Authority: Pub. L. 95-376, Pub. L. 96-289, and Pub. L. 96-561; 92 Stat. 715 (22 U.S.C. 1980).

§§ 258.4 and 258.23, and 258.33 [Amended]

16. In § 258.4, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0095)" at the end of that section; and in §§ 258.23 and 258.33, place the phrase "(Approved by the Office of Management and Budget under control number 0648-0094)" at the end of each respective section.

PART 259—CAPITAL CONSTRUCTION FUND

17. The authority citation for Part 259 reads as follows:

Authority: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; Pub. L. 91-469, 84 Stat. 1018; Sec. 21(a), 84 Stat. 1026. Secs. 259.30-259.38 also issued under Reorg. Plan No. 4 of 1970, 86 Stat. 9090.

§§ 259.30 and 259.35 [Amended]

18. In § 259.30, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0090)" at the end of that section; and in § 259.35, place the phrase "(Approved by the Office of Management and Budget under control number 0648-0041)" at the end of that section.

PART 296—FISHERMEN'S CONTINGENCY FUND

19. The authority citation for Part 296 reads as follows:

Authority: Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841 *et seq.*).

§ 296.5 [Amended]

20. In § 296.5, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0082)" at the end of that section.

PART 401—ANADROMOUS FISHERIES CONSERVATION, DEVELOPMENT AND ENHANCEMENT

21. The authority citation for Part 401 reads as follows:

Authority: Anadromous Fish Conservation Act (79 Stat. 1125, as amended, 84 Stat. 214, 88 Stat. 398), 16 U.S.C. 757a-757f.

§ 401.16 [Amended]

22. In § 401.16, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0102)" at the end of that section.

PART 663—PACIFIC COAST GROUND FISH FISHERY

23. The authority citation for Parts 663 and 674 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 663.10 [Amended]

24. In § 663.10, revise the parenthetical phrase at the end of that section to read as follows: "(Approved by the Office of Management and Budget under control number 0648-0097 is pending)".

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA**§ 674.5 [Amended]**

25. In § 674.5, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0016)" at the end of that section.

[FR Doc. 83-34545 Filed 12-28-83; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 31220-245]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; adjustment of 1984 quotas.

SUMMARY: NOAA issues this notice of adjustment of quotas for the surf clam and ocean quahog fisheries for 1984. These quotas have been selected from a range defined as the optimum yield for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1984.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, (Surf Clam Management Coordinator), 617 281-3600.

SUPPLEMENTARY INFORMATION:

Amendment 3 to the Fishery Management Plan for the Surf Clam and Ocean Fisheries was implemented by final regulations published on January 29, 1984 (47 FR 4268). One of the provisions of the amendment directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

To implement this regulatory provision for establishing quotas, the Director, Northeast Region (Regional Director), has considered the following information: stock assessments; catch records and other relevant information concerning exploitable biomass and spawning biomass; fishing mortality rates; incoming recruitment; project effort and catches; and areas likely to be reopened to fishing.

The Secretary published a notice of proposed quotas based on the Regional Director's recommendation on October 31, 1983 (48 FR 50128). Public comment was requested for a 30-day period. No comments were received concerning any of the proposed quotas. The Secretary,

after consultation with the Council, issues the following quotas for 1984 based on the Regional Director's recommendations:

Fishery	1984 quota in bushels
New England Surf Clam	100,000
Mid-Atlantic Surf Clam	2,350,000
Ocean Quahog	4,000,000

Other Matters

This action is taken under the authority of 50 CFR 652.21 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries, under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Administrative practice and procedure, Fish, Fisheries, Reporting requirements.

[16 U.S.C. 1801 *et seq.*]

Dated: December 22, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-34470 Filed 12-28-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 48, No. 251

Thursday, December 29, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Request for Public Comment on U.S. Standards for Oats

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Request for Public Comment: Review of existing regulations.

SUMMARY: As part of the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) will study and evaluate the U.S. Standards for Oats to determine their effectiveness and responsiveness to the needs of the grain industry. Views and comments are solicited from interested parties to help in the study and evaluation of present grading practices relating to the standards for oats and in the development of recommendations for change.

DATES: Comments must be submitted on or before February 27, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382-1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This study and evaluation of the oats standards (7 CFR 251 *et seq.*) are part of the periodic review of existing regulations. The review will include a determination of the continued need for the standards; the potential for clarifying or simplifying the language of the standards; a review of changes in marketing practices and functions

affecting the standards; a review of changes in technology and economic conditions in the area affected by the standards; and a determination of the potential for improving the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective is to assure that the standards continue to serve the needs of the market to the greatest possible extent.

The public is further advised that specific issues with respect to the standards for oats have been identified by FGIS, as stated below. Information and data are specifically requested on these issues. Recommendations are also requested on the oats standards as a whole.

1. Should the special grade "Tough" and the Sample grade requirement for high-moisture oats be deleted from the oats standards? Currently, "Tough" is defined as "oats which contain more than 14.0 percent but not more than 16.0 percent of moisture (7 CFR 810.258(i)). Also, Sample grade is oats which contain more than 16 percent of moisture (7 CFR 810.256). Moisture is not a grading factor for U.S. No. 1 through No. 4 oats. "Tough" and moisture are not descriptive of grain quality, but do describe the condition of grain. Moisture is required to be on official certificates (7 CFR 800.162(a)) when an official grade determination is made. Further, FGIS is amending or is considering amending all of the other grain standards to delete moisture as a grading factor, and to delete, where applicable, the special grade "Tough".

2. Should the definition of U.S. Sample grade in the grade chart (7 CFR 810.256) be clarified and updated to the current format used in the U.S. Sample grade definition in the wheat standards? Several factor limits now shown in the Grain Inspection Handbook, such as broken glass, animal filth and the like, should be included in the standards for the sake of clarity and uniformity with other standards.

This request for public comment does not constitute notification that changes to the standards are or will be proposed. Any action with respect to the existing standards will be published in the *Federal Register* at a later date. The actions which may be proposed at that time can include continuation of the standards without change; revision in

whole or in part; or elimination of the standards.

The U.S. Department of Agriculture encourages public participation and solicits the public's views on any changes which may improve the official grading standards for oats.

List of Subjects in 7 CFR Part 810

Exports, Grain.

(Secs. 5 and 18, Pub. L. 94-582, 90 Stat. 2809 and 1884 (7 U.S.C. 76 and 87(e)))

Dated: December 22, 1983.

Kenneth A. Gilles,
Administrator.

[FR Doc. 83-34486 Filed 12-28-83; 8:45 am]

BILLING CODE 3410-EN-M

7 CFR Part 810

Request for Public Comment on U.S. Standards for Flaxseed

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Prenotice: Review of existing regulations.

SUMMARY: As part of the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) will study and evaluate the U.S. Standards for Flaxseed to determine their effectiveness and responsiveness to the needs of the grain industry. Views and comments are solicited from interested parties to help in the study and evaluation of present grading practices relating to the standards for flaxseed and in the development of recommendations for change.

DATES: Comments must be submitted on or before February 27, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382-1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This study and evaluation of the flaxseed standards (7 CFR 810.501 *et seq.*) is part

of the periodic review of existing regulations. The review will include a determination of the continued need for the standards, the potential for clarifying or simplifying the language of the standards, changes in marketing practices and functions affecting the standards, changes in technology and economic conditions in the area affected by the standards, and the potential for improving the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective is to assure that the standards continue to serve the needs of the market to the greatest possible extent.

The public is further advised that specific issues with respect to the standards for flaxseed have been identified by FGIS, as stated below. Information and data are specifically requested on these issues, in addition to other recommendations which should be considered by FGIS in this review:

1. Should the format of the flaxseed standards (7 CFR 810.501 *et seq.*) be updated to conform to the current arrangement of the sections as appears in the wheat standards? This would basically consist of realigning sections both in terms of their order and the internal presentation of the provisions.

2. Should the moisture requirement for Sample grade flaxseed be deleted? Flaxseed which contains moisture in excess of 9.5 percent is graded Sample grade (7 CFR 810.513). Moisture is not a grading factor for U.S. No. 1 and U.S. No. 2 flaxseed. Moisture is not descriptive of grain quality, but does describe the condition of grain. Section 800.162(a) of the regulations requires that moisture content be shown on official certificates when an official grade determination is made. FGIS is considering amending all of the other grain standards to delete moisture as a grading factor.

This request for public comment does not constitute notification that changes to the standards are or will be proposed. Any action with respect to the existing standards will be published in the **Federal Register** at a later date. The actions which may be proposed at that time can include continuation of the standards without change, revision in whole or in part, or elimination.

The U.S. Department of Agriculture encourages public participation and solicits the public's views on any changes which may improve the official grading standards for flaxseed.

List of Subjects in 7 CFR Part 810

Exports, Grain.

(See 5 and 18, Pub. L. 94-582, 90 Stat. 2869 and 1884 (7 U.S.C. 76 and 87(e))

Dated: December 22, 1983.

Kenneth A. Gilles,

Administrator.

(FR Doc. 83-34487 Filed 12-26-83; 8:45 am)

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 1097

[Docket No. A0-219-A38]

Milk in the Memphis, Tennessee, Marketing Area; Partial Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts on an expedited basis a change in the location adjustment provisions under the Memphis order. The change was considered at a public hearing held November 15, 1983. The amendment of the Memphis order would limit to 9 cents the reduction to the Class I and uniform prices for plant location for milk received at plants in the State of Tennessee and 50 miles or more from the city hall in Memphis.

The change is necessary to reflect current marketing conditions and to insure orderly marketing in the regulated areas. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and an opportunity to file exceptions thereto have been omitted. Other issues considered at the November 15 hearing will be dealt with in a later decision on this record.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote more orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued September 23, 1983; published September 30, 1983 (48 FR 448141).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Nashville, Tennessee, Georgia and Memphis, Tennessee marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Nashville, Tennessee, on November 15, 1983. Notice of such hearing was issued on September 23, 1983 and published September 30, 1983 (48 FR 44841).

Interested parties were given until November 30, 1983, (postmark date) to file post-hearing briefs on the proposals as published in the hearing notice and on whether the proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Location adjustment provisions of the Memphis order.
2. Pool plant "lock-in" provision under the Nashville order for distributing plants.
3. Pool plant definition under the Georgia order.
4. Whether an emergency exists to warrant the omission of a recommended decision on issues No. 1, 2, and 3.

This decision deals only with issues No. 1 and 4. The remaining issues of the hearing will be considered in a later decision on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Location adjustment provisions of the Memphis order.* The location adjustment provisions of the Memphis order should be revised to limit to 9 cents the reduction in the Class I and uniform prices for milk received at plants in the State of Tennessee and 50 miles or more from the city hall in Memphis, Tennessee.

The Memphis order currently provides that a location adjustment of minus 9 cents shall apply to the Class I and uniform prices for milk received at a plant located outside the State of Mississippi and 50 miles but less than 60 miles from the city hall in Memphis. For each 10 miles in excess of 50 miles, the Class I price to the handler and the uniform price to producers at that plant location are reduced an additional 1.5 cents. As a consequence, minus location adjustments of 9 cents or more now apply at all plants located in the State of Tennessee that are regulated under the

Memphis order and are located more than 50 miles from Memphis. For a plant located at Nashville, a location adjustment of minus 31.5 cents applies.

Dairymen, Inc. (DI) and Associated Milk Producers, Inc. (AMPI), two cooperatives that represent nearly 95 percent of the producers supplying handlers regulated under the Memphis order, proposed that the Memphis order be revised to limit to 9 cents the reduction in the Class I price and the uniform price for milk received at a plant located in Tennessee and more than 50 miles from the city hall in Memphis. This change was supported at the hearing by a representative of a distributing plant located at Murfreesboro, Tennessee, that is regulated under the Georgia milk order, and the representative of distributing plants located at Louisville, Kentucky, and Memphis, Tennessee, that are regulated by the Louisville-Lexington-Evansville and Memphis milk orders, respectively.

The cooperatives proposed that the location adjustment provisions of the Memphis order be revised to resolve a potential Class I price alignment problem involving a distributing plant at Nashville, Tennessee, that is operated by Malone & Hyde, Inc. The plant began operations on October 31, 1983, as a pool plant under the Nashville order. Under the Nashville order the handler's Class I differential is \$1.85. However, in the event the plant were to become regulated under the Memphis order, the handler's Class I differential would be \$1.625.

In conjunction with its proposal on location adjustments, DI proposed that the Nashville plant be regulated under the Nashville order until the third month in which it has more than 50 percent of its total route disposition in another Federal order market. DI's proposal in this regard was supported at the hearing by AMPI.

The purpose of the "lock-in" and the location adjustment proposals by the cooperatives is to maintain a \$1.85 Class I differential for the Nashville plant whether the plant is regulated by the Nashville or Memphis orders. Under the proposed "lock-in" provision, a plant in the Nashville, Tennessee, marketing area would continue to be regulated as a pool plant until the third month in which the plant has more than 50 percent of its total route disposition in another Federal order marketing area. The current provisions of the order provide that a plant would shift regulation during the third month in which it had greater sales in another Federal order marketing area. The cooperatives' purpose in proposing the corollary

proposal to revise the location adjustments of the Memphis order is to provide a Class I differential of \$1.85 under the Memphis order in the event the Nashville plant's sales in the Memphis marketing area increase to the point that the plant becomes regulated under the Memphis order at some future time. In the absence of any change, the Class I differential would be \$1.625 at the Nashville plant under the Memphis order.

The representatives of the Murfreesboro and Memphis, Tennessee, distributing plants and DI in its capacity as the operator of a pool distributing plant located in Nashville and regulated under the Nashville order testified that their plants would be at a competitive disadvantage if the Malone & Hyde plant became regulated under the Memphis order. The Murfreesboro plant's representative indicated that his plant, which is regulated under the Georgia order, would have a 36-cent higher Class I price than the Malone & Hyde plant. The Memphis plant operator stated that his plant would have a 31.5-cent higher Class I price than the Malone & Hyde plant. DI testified that its plant at Nashville would have a 22.5-cent per hundredweight cost disadvantage in competing for sales in the Nashville market.

Turner Dairies, Inc., the operator of milk plants located at Covington, Tennessee, and Fulton, Kentucky, that are regulated by the Memphis and Paducah Federal milk orders, respectively, submitted a brief in support of the change in the location adjustments of the Memphis order proposed by DI and AMPI. The company indicated that its two plants will compete for sales with Malone & Hyde's plant throughout western Tennessee, Central Tennessee, and northern Mississippi. The plant operator indicated that the 31.5-cent location adjustment that would apply for milk received at the Malone & Hyde plant when regulated under the Memphis order would give the Malone & Hyde plant an unwarranted competitive advantage over Turner Dairy and other handlers.

Barber Pure Milk Company, Tupelo, Mississippi, and Barber Dairies, Inc., Birmingham, Alabama, submitted briefs in support of the proposals by DI and AMPI to amend the Nashville, Georgia and Memphis milk orders. The point out that their Tupelo plant will be competing for sales with the Malone & Hyde plant at Nashville. In this regard, they indicate that the Nashville plant will supply Malone & Hyde's warehouses at Tupelo, Mississippi, and that the sales distribution from the warehouse will be

in competition with Barber Dairies' plant at Tupelo which is regulated under the Alabama-West Florida order. Since the Class I differential at the Tupelo plant is \$2.10 under the Alabama-West Florida order, the company takes the position that the Malone & Hyde plant should have no location adjustment for milk received at the Nashville plant if regulated under the Memphis order.

Gold Star Dairy, a pool distributing plant under the Central Arkansas order, filed a brief in support of the amendments proposed by DI and AMPI. The dairy operator indicated that in many respects the Gold Star operation is similar to the Malone & Hyde operation. In that regard, he pointed out that Gold Star Dairy is located in Little Rock, Arkansas, and distributes milk in Central Arkansas, Memphis and other areas. He noted, too, that at the time the Gold Star Dairy began operations the location adjustment provisions of the Memphis order were amended to provide that no location adjustment would apply if the plant became regulated under the Memphis order. In the absence of such change, the plant would have had a 21-cent lower Class I price if the plant became regulated under the Memphis order.

Malone and Hyde, Inc., the operator of the Nashville plant that would be affected by the proposals opposed their adoption. In opposing the proposed change in location adjustment pricing under the Memphis order, opponent contended that the Class I differential of \$1.625 plus the cost of transporting packaged milk to Memphis, which he estimated to be 80 cents per hundredweight, would exceed the Class I differential of \$1.94 that is provided in the Memphis order for plants located in Memphis.

Malone & Hyde testified that it is a wholesale grocer operating in 16 southern states. The company serves its own stores, primarily in Memphis, and independently owned groceries throughout the 16-state area. To supply the stores in the 16 states, the Malone & Hyde company recently acquired a milk processing plant at Nashville, Tennessee, formerly operated by Kraft Foods. The acquisition of the plant represents the company's initial venture into the packaging of fluid milk for its grocery operation. From the Nashville processing plant the company plans to supply warehouses located in Memphis, Tennessee; Tupelo, Mississippi; Birmingham, Alabama; Nicholasville, Kentucky; and Sikeston, Missouri.

The plant operator indicated that the Nashville plant presently has a maximum capacity to process 11 million

pounds of milk per month. He estimated that by the summer of 1984 the plant would be operating at its maximum capacity and that the plant's route disposition to its warehouses as a percent of total fluid milk sales would be as follows: Memphis, 42; Nashville, 20; Birmingham, Alabama, 13; Tupelo, Mississippi, 12; Sikeston, Missouri, and Nicholasville, Kentucky, 13. In November 1984 he expects the plant's capacity to be 20 million pounds per month.

For the month of October 1983, the initial month when the Malone & Hyde plant began operations, the company planned the plant's start-up so that the greatest proportion of the plant's route disposition would be in the Nashville marketing area. This was done to insure that the plant would be regulated initially under the Nashville order for the month of October and that the plant would continue to be regulated during the months of November and December under such order due to the present "lock-in" provision of the Nashville order.

The plant's representative indicated that the company located its processing plant in Nashville for 4 reasons. First, there is an adequate supply of local milk. Second, a plant was available at a reasonable price. Third, the location is centrally located for the warehouses expected to be served. Fourth, the existing order prices and location adjustments would make it possible for the company to compete without too much of a cost disadvantage. In this regard, the company's representative testified that the delivered cost of the company's packaged fluid milk products to its warehouses would be higher than its competitors at such locations, except in Nashville.

The company had expected to be and planned on being regulated under the Memphis order. It expected, however, to be supplied by the producers that previously served the predecessor Kraft plant when it was regulated under the Nashville order. The company recognized, too, that its regulation under the Memphis order may necessitate and make desirable a change in that order from individual handler to marketwide pooling.

In testimony at the hearing and in its brief, Malone and Hyde attempted to justify a minus 31.5-cent location adjustment at the Nashville plant when regulated under the Memphis order on the basis that the delivered costs on 80 percent of its packaged fluid milk products will exceed the Class I milk costs incurred by its competitors. The company estimates of its delivered costs for packaged fluid milk products are

based on the company's hauling costs per hundredweight from the Nashville plant for packaged products to its warehouses as follows: Memphis, 80 cents; Tupelo, 75 cents; Birmingham, 71 cents; Nicholasville, 80 cents; and Sikeston, 75 cents. On this basis the company projected that its per hundredweight cost for packaged fluid milk products delivered to the warehouses supplied by the plant would exceed the cost of its competitors at such warehouse locations by the following amounts: Memphis, 48.5 cents; Tupelo, 27.5 cents; Birmingham, 3.5 cents; Nicholasville, 72.5 cents and Sikeston, 50.5 cents.

With regard to the 22.5-cent difference in Class I costs that would exist between two Nashville plants when one is regulated by the Nashville order and one by the Memphis order, Malone and Hyde pointed out that the cost of milk in Class I uses by plants regulated under various Federal milk orders and selling milk in the Nashville area vary by as much as 60 cents per hundredweight and in the Memphis area by as much as 50 cents.

The proposed change in location adjustments for the Memphis order should be adopted. Such change is needed whether or not the "lock-in" provision proposed for adoption under the Nashville order, an issue which is reserved for a later decision, is adopted. The change adopted herein would assure that the \$1.85 Class I differential applicable under the Nashville order at the Malone & Hyde plant at Nashville would continue to apply if the plant were to become fully regulated at some future time under the Memphis order.

Under the current provisions of the Nashville and Memphis milk orders, the record evidence indicates that the Malone & Hyde plant will be regulated under the Memphis order in January 1984. The plant was a pool plant under the Nashville order during October 1983, its first month of operation, by virtue of having more sales in the Nashville market than any other Federal order market. However, the plant is expected to have more sales in the Memphis marketing area than in the Nashville marketing area beginning with the month of November and for an indefinite period thereafter. Since the Nashville order provides that a pool plant will not shift regulation to another order until the third consecutive month in which the plant has greater sales in the other market, the Nashville plant will become regulated under the Memphis order in January 1984, the third month in which the plant's sales in the Memphis marketing area will exceed its sales in the Nashville marketing area.

In the absence of any amendatory action, the Class I price for milk received at two different milk plants in Nashville will differ by 22.5 cents. A plant selling the greatest proportion of its total route disposition in the Nashville market and regulated under the Nashville order would have a Class I differential of \$1.85. The other plant selling the greatest proportion of its total route disposition in the Memphis market would have a Class I differential of \$1.625. In such circumstance, the Memphis order plant with the 22.5-cent lower Class I price would have an unwarranted economic advantage in competing in the local Nashville market with nearby handlers who are regulated under the Nashville order.

The minimum Class I prices under the various Federal milk orders are established at levels which are intended to insure an adequate supply of milk for each market. In general the Class I prices established under Federal orders increase from north to south for locations in the central region of the United States. As a result of this Class I price structure from north to south, the Class I prices for markets either east or west of a particular location tend to be at about the same level. In the case of the Memphis and Nashville markets, the basic Class I price difference is only 9 cents per hundredweight. Such price relationships are a result of the prices that have been found necessary to assure supplies of milk for handlers whose plants are located in the respective markets.

Dairy farmers should not be required to accept a lower Class I price for milk in fluid uses because a handler chooses to expand his sales area into other marketing areas. In this instance, dairy farmers who will be the suppliers of the Malone & Hyde plant have been receiving a blend price based on a Class I differential of \$1.85 for their milk during their association with the predecessor Kraft plant and during the interim period between such plant's closing in July 1983 and the present time. The costs that such producers incur in producing and delivering raw milk to the Nashville plant are not going to decrease automatically by 22.5 cents because the plant begins to sell more Class I products in the Memphis market than it has been selling in the Nashville market. Thus, the possibility exists that if the Malone & Hyde plant becomes regulated under the Memphis order, the plant might experience difficulties in attracting adequate supplies of milk. With a 22.5-cent decrease in the handler's Class I differential, producers who had been supplying the plant when

it was pooled under the Nashville order could be expected to seek new outlets that would permit them to stay on the Nashville market in the event that the classified uses of the Malone & Hyde plant approximate the marketwide utilization of milk under the Nashville order. While the plant operator estimated that the Class I utilization of milk received at the plant would be from 80-85 percent, it is unlikely that the Class I utilization for all the milk that is physically received at the plant as well as reserve milk that will necessarily be associated with the plant will be that high. Since the plant operator expects to be fully supplied by producers who are not members of a cooperative, the plant operator will need to associate reserve milk supplies with the plant that are likely to be disposed of at nonpool manufacturing plants. The plant's needs with respect to reserves will depend upon the storage capacity available at the plant, the number of days that the plant packages milk during the week, and the variation in the plant's requirements on the days that it does bottle milk.

As previously noted, it is the intent of the Malone & Hyde plant operator to obtain the plant's fluid milk requirements from producers who are not members of a cooperative association and who are currently associated with the Nashville market. In November 1984 when the plant's processing capacity is expected to be increased by 9 million pounds per month, it would seem that the plant would have to look to cooperative associations for supplemental milk supplies. It is unlikely that the plant could continue to obtain its total fluid milk requirements from nonmember producers since the 9 million pound increase would represent a 20 to 25 percent increase in the pounds of producer milk currently associated with the Nashville market. With respect to the Class I milk of producers currently associated with the Nashville market, the 9 million pound per month increase represents a 35 to 40 percent increase. This will result in a substantial increase in the near future in the quantity of fluid milk that dairy farmers will be called upon to deliver to the Nashville plant. In the event that the Malone & Hyde plant does require supplemental milk supplies, it is unlikely what such supplies would be available to the plant at a Class I differential lower than \$1.85. In this regard, it is noted that DF's processing plant at Nashville is obligated to pay a Class I differential of \$1.85. Under such circumstances, it is certain that DF is not going to sell milk to its competitor at a

22.5 cent lower Class I price than the cooperative would be obligated to pay for milk at its processing plant in Nashville.

Permitting a plant at Nashville to have a 22.5 cent lower Class I price when regulation of the plant shifts from the Nashville order to the Memphis order thus could have a destabilizing effect upon the Nashville market with respect to producers and handlers. To safeguard against this situation, the Memphis order should be revised to provide a Class I differential of \$1.85 at the Nashville location. This should be accomplished by revising the location adjustment provisions of the Memphis order to provide for a reduction of 9 cents in the Class I and uniform prices for milk received at plants in the State of Tennessee and 50 miles or more from the City Hall in Memphis, Tennessee. Under such change the Class I differential of \$1.94 that is provided under the Memphis order would be reduced by 9 cents at the Nashville location. This would result in \$1.85 Class I differential at Nashville under the Memphis order, the same as the Class I differential that applies under the Nashville order.

Emergency action. The due and timely execution of the functions of the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision and the opportunity to file exceptions thereto with respect to Issue No. 1. The continued orderly marketing of milk requires that the level of Class I pricing that applies under the Nashville, Tennessee, milk order for milk received at a plant located at Nashville that began operation as a pool plant under the Nashville order on October 31, 1983, should also apply during any month that the plant is regulated under the Memphis, Tennessee, order. Since testimony by the plant operator indicates that the Nashville plant would become regulated under the Memphis order in January 1984, it is necessary that amendatory action be completed prior to January 1, 1984.

The omission of a recommended decision was discussed at the hearing. Representatives of the 2 cooperative associations that submitted proposals for consideration at the hearing, a distributing plant at Murfreesboro, Tennessee, regulated under the Georgia order, and distributing plants at Memphis, Tennessee, and Louisville, Kentucky, that are regulated by the Memphis and Louisville-Lexington-Evansville milk orders, respectively, requested that emergency action be

taken to institute a pool plant "lock-in" provision under the Nashville order that would apply to distributing plants located within the Nashville marketing area, to amend the pool plant provision of the Georgia order and to revise the location adjustment provisions of the Memphis order. Their testimony in support of the omission of a recommended decision was based upon the need to take action as soon as possible to guard against disruptive marketing conditions that could occur if the Nashville plant that recently began operations as a pool plant under the Nashville order became regulated under the Memphis order. Proponents based their request for emergency action on their expectation that the plant would become regulated under the Memphis order in January 1984.

Counsel for the Nashville distributing plant that would be affected by the hearing proposals opposed in particular the omission of a recommended decision regarding the proposal to apply a pool plant "lock-in" provision under the Nashville order as well as proposals to modify the location adjustment provisions of the Memphis order. He noted that the statements by interested parties who requested the emergency action related primarily to the competitive relationship between competing handlers that could result under the current location adjustment provisions of the Memphis order.

Under the current provisions of the Nashville order, the plant at Nashville which began operations on October 31 as a pool plant under the order would continue to be a pool plant under such order during the months of November and December 1983 even though the plant has greater sales in the Memphis marketing area during such months than in the Nashville marketing area. In January 1984, however, according to the plant operator, the Nashville plant will be regulated under the Memphis order. In his opinion, January 1984 would be the third consecutive month in which the plant would have greater sales in the Memphis marketing area than in the Nashville marketing area. Under the current "lock-in" provisions of the Nashville order, the plant would then be released from regulation under the Nashville order. On the basis of the plant's expected sales patterns, the Nashville plant would be regulated under the Memphis order beginning in January 1984.

As noted in the discussion under the issue of location adjustment provisions of the Memphis order, disruptive marketing conditions would occur if the Nashville plant gained a 22.5-cent Class

I price advantage on handlers that it currently competes with because of a change in the plant's regulation from the Nashville to the Memphis order. To safeguard against this unwarranted price advantage with respect to the handler's sales in the Nashville marketing area, it is necessary that the location adjustment provisions of the Memphis order be amended on or before January 1, 1984. In order to complete the amendatory action within such time frame, it is necessary that emergency action be taken.

It is therefore found that good cause exists for omission of the recommended decision and the opportunity to file exceptions thereto with respect to the issue dealing with location adjustment pricing under the Memphis order.

With regard to amending the Nashville order to provide for a pool plant "lock-in" provision that would apply to a distributing plant located in the Nashville marketing area until the third consecutive month in which the plant disposed of more than 50 percent of its total route disposition in another marketing area, there is no clear showing that emergency action is warranted. Proponents of a "lock-in" provision asserted that disruptive marketing conditions could occur with regard to producer pay prices if the Nashville plant became regulated under the Memphis order which has an individual handler pool and the plant's Class I utilization varied greatly from the marketwide average of handlers in the Nashville market, the area in which the plant procures its supply of producer milk. However, the Nashville plant has just begun operations and hence, there is no way of foretelling with certainty what the plant's utilization and resulting pay prices to its producers will be. Furthermore, it is uncertain that the proposed "lock-in" provisions would retain pool plant status for such plant under the Nashville order from January 1984 until the plant reaches its current capacity sometime during the summer of 1984. Under such circumstances, there is not sufficient reason to omit the issuance of a recommended decision and the opportunity to file exceptions thereto with respect to proposed revisions of the pool plant "lock-in" provisions of the Nashville order and the pool plant provisions of the Georgia order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were

considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

(a) The tentative marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk, in the Memphis, Tennessee, marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the *Federal Register*. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

October 1983 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Memphis, Tennessee, marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on December 23, 1983.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Service.

Order¹ amending the order, regulating the handling of milk in the Memphis, Tennessee, marketing area.

Finding and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Memphis, Tennessee, marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

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

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

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand

¹ The order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Memphis, Tennessee, marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

(Sec. 1-19, 48 Stat. 31, as amended: 7 U.S.C. 601-674)

PART 1097—MILK IN THE MEMPHIS, TENNESSEE, MARKETING AREA

§ 1097.52 [Amended]

In § 1097.52, the table contained in this section is revised to read as follows:

Location of plant	Rate per hundredweight
In the State of Tennessee and 50 miles or more from the city hall in Memphis.	Subtract 9 cents.
In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Add 9 cents.
For each additional 10 miles in excess of 50 miles.	Add an additional 1.5 cents.
Outside the States of Tennessee and Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Subtract 9 cents.
For each additional 10 miles in excess of 50 miles.	Subtract an additional 1.5 cents.

[FR Doc. 83-34494 Filed 12-29-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1126

[Docket NO. AO-231-A51]

Milk in Texas Marketing Area; Extension of Time for Filing Briefs and Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of Time for filing briefs and exceptions.

SUMMARY: This notice extends the time for filing briefs and exceptions on proposals to amend the Texas milk marketing order that were considered at

a public hearing held October 4-7, 1983, at Irving, Texas. This notice extends the time for filing briefs on proposals Nos. 3-9 considered at the hearing. This notice also extends the time for filing exceptions to a partial recommended decision concerning proposals Nos. 1 and 2 that was issued on December 6, 1983. The requests for additional time were submitted by interested parties who participated at the hearing.

DATES: Briefs on proposals Nos. 3-9 are now due on or before January 9, 1984, and exceptions to the recommended decision on proposals Nos. 1 and 2 are due on or before January 27, 1984.

ADDRESS: Briefs and exceptions (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued, August 29, 1983; published, September 1, 1983 (48 FR 39643).

Correction to Notice of Hearing: Published, September 12, 1983 (48 FR 40894).

Extension of Time for Filing Briefs: Issued November 25, 1983; Published December 1, 1983 (48 FR 54243).

Recommended Decision: Issued December 6, 1983; published December 12, 1983 (48 FR 55290).

Correction to Recommended Decision: published December 19, 1983, (48 FR 56060).

Notice is hereby given that the time for filing briefs, proposed findings and conclusions on the record of the public hearing held October 4-7, 1983, at Irving, Texas, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area pursuant to notice issued August 29, 1983 (48 FR 39643) is extended to January 9, 1984, with respect to proposals Nos. 3-9 as set forth in the notice of hearing. Notice is also hereby given that the time for filing exceptions to the partial recommended decision issued December 6, 1983 (48 FR 55290) on proposed amendments to the Texas milk order is extended to January 27, 1984.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing

agreements and marketing orders (7 CFR Part 900).

List of Subjects in CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on: December 22, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-34490 Filed 12-29-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AGL-25]

Proposed Alteration of Transition Area; Newark, Ohio

AGENCY: Federal Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a separate transition area for Newark, Ohio, and to alter the airspace designated for Newark Heath Airport (formerly Licking County Airport) and Buckeye Executive Airport, to accommodate existing requirements at both airports.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before Feb 3, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, attention: Rules Docket Clerk, Docket No. 83-AGL-25, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic

Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action describes the designated airspace requirements associated with Newark Heath Airport and Buckeye Executive Airport. It returns a small area southwest of Buckeye Executive Airport and a larger area northwest of Newark Heath Airport to a non-controlled status below 1200 feet above the surface. At the same time, it expands the transition area from 8 to 8.5 miles east of Newark Heath Airport. Also, this action removes the Newark Heath transition area description from the Columbus, Ohio, transition area and establishes a separate transition area in order to simplify both descriptions.

Minimum descent altitudes may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Newark, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Newark, OH

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Newark-Heath Airport, Newark, Ohio, (latitude 40° 01' 29" N., longitude 82° 27' 44" W.); within 1.5 miles either side of the 324° bearing from Newark-Heath Airport, extending to 11 miles northwest of the airport; within a 6 mile radius of Buckeye Executive Airport, Hebron, Ohio, (latitude 39° 57' 42" N., longitude 82° 32' 28" W.); within 6 miles either side of the 351° bearing from the airport, extending to 12.5 miles north of the airport.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on December 13, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-34406 Filed 12-28-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AGL-23]

Proposed Alteration of Transition Area; Mt. Vernon, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a separate transition area for Mt. Vernon, Ohio, and to redescribe and reduce the airspace currently designated for Knox County Airport (formerly Mt. Vernon Airport).

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 3, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des

Plaines, Illinois 60018, telephone (312) 894-7360.

SUPPLEMENTARY INFORMATION: This action redescribes the airspace associated with Knox County Airport to accommodate existing airspace requirements. The new description reduces the radius of designated airspace by 1.5 miles from 8 miles to 6.5 miles and changes the name of the associated airport from Mt. Vernon Airport to Knox County Airport. Also, this action removes the current airspace designation from the Columbus, Ohio, transition area and establishes a separate transition area for Knox County Airport in order to simplify both descriptions.

Minimum descent altitudes may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposed

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Mt. Vernon, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Mt. Vernon, OH

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Knox County Airport, Mt. Vernon, Ohio (latitude 40°19'42" N., longitude 82°31'22" W.).

(Sec. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves and established order of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedure and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on December 13, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-34407 Filed 12-28-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AGL-22]

Proposed Alteration of Transition Area; Delaware, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Delaware, Ohio, transition area to revise/reduce the airspace currently designated for the transition area. A recent review of the currently published description revealed a need to modify the area involved. The modified description is presented in the text of this notice.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 3, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 894-7360.

SUPPLEMENTARY INFORMATION: This action redescribes the Delaware, Ohio, transition area to accommodate existing airspace requirements. A review of designated airspace in the Delaware, Ohio, area prompted a rewrite to better

and more accurately describe the airspace associated with the transition area. The new description returns a portion of designated airspace within a 2.5 mile radius of Delaware Municipal Airport to a non-controlled status. The new description also designates an additional amount of airspace approximately 1 mile x 6 miles located northwest of the Delaware Municipal Airport.

Minimum descent altitudes may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling

(202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Delaware, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

[Airspace Docket No. 83-AGL-22]

List of Subjects in 14 CFR Part 71

Transition areas; Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Delaware, OH

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Delaware Municipal Airport, Delaware, Ohio, (latitude 40°16'46" N., longitude 83°06'22" W.); and within 3 miles either side of the 290° bearing from the Delaware RBN (latitude 40°16'41" N., longitude 83°06'33" W.) extending from the RBN to 9.5 miles northwest of the RBN. (Sections 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on December 13, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-34406 Filed 12-28-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AGL-21]

Proposed Designation of Transition Area; Baldwin, Mich.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a new controlled airspace area near Baldwin, Michigan, to accommodate a new VOR/DME-A instrument approach into Baldwin Municipal Airport, established on the basis of a request from the Baldwin Municipal Airport officials to provide that facility with instrument approach capability.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 3, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above the surface to 700' above the surface. The development of the proposed instrument

procedure requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of

Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a new 700-foot controlled airspace transition area near Baldwin, Michigan.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Baldwin, MI.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Baldwin Municipal Airport (latitude 43°52'35" N., longitude 85°50'25" W.) and within 5 miles either side of the White Cloud VORTAC 344° radial, extending from the 5-mile radius to the White Cloud VORTAC, excluding that airspace overlying the Roben-Hood, Michigan, transition area. (Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on December 13, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

(FR Doc. 83-34409 Filed 12-28-83; 8:45 am)

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 821 0159]

General Motors Corp. and Toyota Motor Corp.; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction; Addition of Commissioners' Statement.

SUMMARY: The following Commissioners' Statement was filed after the Commission's Proposed Consent Agreement in the Matter of General Motors Corporation and Toyota Motor Corporation was scheduled for publication in the *Federal Register*. It is published here to aid interested persons filing comments with the Commission.

DATE: Comments must be received on or before February 27, 1984.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CDI, Edward F. Glynn, Washington, D.C. 20580. (202) 634-8608.

SUPPLEMENTARY INFORMATION: The following Statement of Chairman James C. Miller III, Commissioner George W. Douglas, and Commissioner Terry Calvani Concerning Proposed General Motors/Toyota Joint Venture was filed after the Proposed Consent Agreement was scheduled for publication on Wednesday, December 28, 1983 (48 FR —).

Benjamin I. Berman,
Acting Secretary.

Statement of Chairman James C. Miller III, Commissioner George W. Douglas, and Commissioner Terry Calvani Concerning Proposed General Motors/Toyota Joint Venture

The Federal Trade Commission has completed its antitrust review of the proposed joint venture between General Motors Corporation and Toyota Motor Corporation (the "venture", "JV", or "Fremont venture"). That investigation is one of the most intensive, thorough antitrust reviews ever undertaken. The investigation was conducted under the procedures of the Hart-Scott-Rodino Antitrust Improvements Act of 1976¹ by Commission attorneys, economists, and consultants, many of whom had extensive experience regarding the automobile industry. A voluminous

¹ 15 U.S.C. 18a (1982). Because this Act and other statutes limit the Commission's release of confidential business information, this statement necessarily cannot discuss much of the specific data upon which the Commission based its decision.

investigative record, as well as detailed staff analyses and memoranda, was produced. In conducting the investigation, the Commission staff deposed key officials of each automobile producer and interviewed numerous other auto industry experts including manufacturers, union officials, and consultants. Extensive documentary evidence including competitively sensitive profit, cost, and pricing data was reviewed.

Following its review of the investigative record and its staff's recommendations, the Commission has determined that the public interest requires the provisional acceptance of a consent agreement and order against GM and Toyota. The consent order limits the venture's scope and duration, limits the exchange of certain competitively sensitive information, and imposes strict recordkeeping and reporting requirements to facilitate Commission monitoring of the venture's future operations. Following a public comment period of sixty days, the Commission will determine whether to give final approval to the consent agreement.

Overview of the Venture

The Fremont venture, as limited by the consent agreement, contemplates formation of a joint venture corporation between GM and Toyota to manufacture new subcompact automobiles at a now-idle GM plant in Fremont, California. GM will purchase automobiles from the joint venture for distribution through its dealers. In summary,² the venture will have a nominal production of 200,000 units annually (known to the parties as "one module")³ of a version of Toyota's existing "Sprinter" model, presently sold only in Japan. Production is scheduled to begin in December 1984. In the first year of production, Toyota will produce approximately 50 percent (by value) of the components.

Although GM and Toyota will hold equal equity in the joint venture and each will appoint half of the board of directors, Toyota will appoint the chief management personnel for the venture. The venture is committed to use former GM Fremont workers as the primary source of labor and to recognize the United Auto Workers ("UAW") as the bargaining representative. The collective bargaining agreement, as contemplated

by a signed Letter of Intent with the union, is expected to provide sufficient flexibility to implement Toyota's lower-cost management and production methods.

Benefits of the Venture

In conducting its analysis, the Commission recognized that the Fremont venture should not be viewed factually as a merger between GM and Toyota because the areas of continued competition between the companies will dwarf the limited area of cooperation represented by the joint venture. Because the structure and the small size of the venture does not appear to pose any significant structural problems, traditional concentration analysis, whether expressed through Herfindahls or other measures, will be of limited value. As a result, the Commission's analysis has sought to identify the potential efficiency benefits and antitrust concerns associated with the venture and to balance these factors.

The Commission has provisionally concluded that the venture offers potential for procompetitive benefits in the American automobile industry. First, the venture would likely increase the total number of small cars available in America, allowing American consumers greater choice at lower prices despite present restrictions on Japanese imports.⁴ Second, the joint venture car will cost less to produce than if GM were forced to rely immediately on other alternatives. Third, and most importantly, the venture offers a valuable opportunity for GM to complete its learning of the more efficient Japanese manufacturing and management methods. If GM can learn how to build significantly lower cost cars, as Japanese producers can now do, it will attempt to implement those lower-cost methods at its other plants. To the extent the Fremont venture can demonstrate successfully that the Japanese system can work in America, the Commission finds that this will lead to the development of a more efficient, more competitive U.S. automobile industry.

Such a result would be significant indeed. Over the past ten years, American auto makers have steadily lost ground to imported small cars. Imports, particularly those from Japan, have dramatically increased

competition, leading to lower small car prices, and increased variety for American consumers. The result has been fewer cars built in the U.S. and fewer jobs for American workers. The principal reason for this loss is Japanese auto manufacturers produce small cars less expensively than do U.S. producers. They can sell cars for less in the U.S.—even after transportation costs and tariffs.

Finally, perhaps the most important potential procompetitive benefit from this JV is the opportunity to increase GM's, and ultimately the entire U.S. automobile industry's long-term productive efficiency. GM will acquire hands-on experience of the highly efficient Japanese system of management and manufacturing. Nevertheless, many have asserted that GM does not need Toyota to learn how to lower costs. Although GM no doubt already has learned much about Japanese manufacturing methods, the opportunity to work on a daily basis, over several years, with Toyota officials, will increase GM's knowledge.⁵

Many sources, including depositions of automobile executives not related to the JV, established that in depth, daily accumulation of knowledge regarding seemingly minor details is a more important source for increased efficiency than a broad but shallow understanding of Japanese methods. Such in depth knowledge appears to be achieved only through the kind of close relationship the venture will allow. Equally important, the JV should encourage GM managers and the UAW to cooperate with Japanese management and to adopt production techniques by actually demonstrating their viability at a completely redesigned Fremont plant, a new, non-GM corporate entity. The joint venture plans to build cars at Fremont with far fewer employees and with more flexible work rules than currently exist at GM plants. If Fremont is a successful demonstration to management and workers that substantial cost savings can be obtained, these flexible contracts and working conditions will be transferred to other GM plants, and, by assimilation, to the manufacturing facilities of other U.S. manufacturers.

Anticompetitive Concerns

On the other hand, certain aspects of the venture raise antitrust concerns that must be analyzed closely. Whenever

² Further details of the venture's structure are contained in the Analysis to Aid Public Comment, which will be published in the Federal Register with the proposed Consent Agreement, and the Memorandum of Understanding attached as an exhibit to the Complaint.

³ The module capacity can probably be "stretched" to produce about 250,000 units.

⁴ The Japanese Government has imposed a "Voluntary Restraint Agreement" ("VRA") under which Japan "voluntarily" limits the number of cars it exports to the U.S. The VRA's initial three-year life was recently extended to a fourth year, at a slightly higher quota of permissible imports. Consequently, American consumers have fewer Japanese cars than they would otherwise desire.

⁵ The Commission's investigation has established that Toyota is a far superior source of this knowledge than other possible Japanese joint venture partners.

two competitors—especially substantial ones such as GM and Toyota—collaborate to offer a product, close antitrust scrutiny is warranted. In conducting its analysis, the Commission reviewed an extensive range of possible anticompetitive concerns, most of which were found to be of low probability or of small magnitude when balanced against the procompetitive benefits of the joint venture.

For example, the Commission has examined the pricing formula that establishes the price at which GM will purchase the JV vehicle.⁶ For the joint venture to function, there must be some agreement on pricing, if only to state that prices must be continually renegotiated. If the JV is otherwise lawful, agreements on price reasonable necessary to market the JV's product are not *per se* unlawful. The pricing formula chosen does not raise significant anticompetitive concerns and has one considerable advantage: it decreases the need for GM and Toyota to discuss the price of the JV vehicle each year, thereby decreasing the need to exchange competitively-sensitive information.

Given the characteristics of the automobile market, it appears that the joint venture will not result in an increased risk of tacit or explicit collusion. Automobiles are highly differentiated in terms of quality, performance, appearance, and durability. The demand for cars shows cyclical swings. Because firms have unequal cost structures, each firm has a different profit-maximizing price. These and other characteristics make a collusive agreement difficult to establish and maintain.⁷

The Commission also analyzed whether the venture might deter Toyota's entry into U.S. production. The Commission believes the evidence does not support a conclusion that this concern is valid. The evidence shows that Toyota contemplates no such action. Toyota's experience with American suppliers and workers as a result of the joint venture, however, may reduce its apprehensions concerning U.S. production and thus may increase Toyota's incentives to enter into U.S. production.

On the other hand, the Commission determined that two areas of competitive concern were sufficiently grave and probable to warrant

Commission action. The first is that the JV could eventually lead to restricted output in the small car market by reducing GM's incentives to produce a small car on its own. If the joint venture is limited to production of one module, however, GM will not come close to satisfying all of its small car needs. Thus, a one-module joint venture will not reduce GM's incentives to build a competitive small car in the U.S.

In the absence of the consent agreement, the Commission found that it had reason to believe that an expansion of output was likely under the joint venture agreement, given the parties' strong incentives, particularly on the part of GM with its great demand for small cars. Indeed, the Memorandum of Understanding appears to contemplate such expansion, stating that:

GM's annual requirements are presently expected to exceed 200,000 units per annum. Both parties will, therefore, assist the JV in increasing its production to the maximum extent possible within available capacity. Requirements for capacity beyond first module will be the subject of a separate study. (Memorandum of Understanding at 3).

A second area of anticompetitive concern is the exchange of competitively sensitive information that is not necessary for the operation of the joint venture. Use of the joint venture to facilitate the exchange of such information could significantly increase the likelihood of anticompetitive performance in this industry. Our concern in this area is not with the information that must be exchanged to make the joint venture work but with broader information exchanges. The Memorandum of Understanding lacks adequate safeguards to prevent the flow of such information. Although both parties have offered to institute voluntary guidelines to address this concern, such voluntary assurances, unaccompanied by any reporting or enforcement mechanism, may well prove insufficient to address the competitive harm associated with such information exchanges.

In summary, the Commission's investigatory record establishes clear evidence of present incentives for production expansion and information exchanges. Neither expansion of the joint venture nor exchange of information beyond the scope described above are reasonably necessary for the joint venture to obtain the many benefits it offers. As noted above, the present structure of the joint venture lacks adequate safeguards to prevent these occurrences. Although the parties have recently asserted that they do not intend to engage in such activities, and the

Commission believes that their present statements are responsible, sincere expressions of current intentions, the Commission is concerned that such intentions may change. The Commission has therefore determined that the public interest requires provisional acceptance of an order against GM and Toyota requiring them to confine the venture to its contemplated scope and mandating certain record keeping and reporting requirements necessary to permit continued, close monitoring of the joint venture's future operations.

Conclusion

The Commission has provisionally determined that the proposed Fremont venture—as outlined in the Memorandum of Understanding and as restricted by the consent agreement—creates a substantial likelihood of producing significant procompetitive benefits to the American public. The Commission has concluded that these procompetitive benefits to the American consumer would outweigh any anticompetitive risks, *provided* that the scope of the venture is restricted. Accordingly, the Commission has provisionally accepted a consent agreement that provides the appropriate safeguards. The Commission believes that the sixty-day public comment period required by the Commission's rules will provide a valuable opportunity for all interested persons to comment on the proposed venture and will furnish insights on the appropriateness of the provisionally-accepted consent order. The Commission intends to review all such public comments expeditiously.

[FR Doc. 83-34664 Filed 12-29-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 83N-0366]

Cream Products; Advance Notice of Proposed Rulemaking on the Possible Amendment of U.S. Standards of Identity and Establishment of a New Standard

Correction

In FR Doc. 83-33301, beginning on page 56072 in the issue of Monday, December 19, 1983, make the following correction:

On page 56074, first column, paragraph 3.1.2 should have read:

⁶ The initial price of the joint venture car will be negotiated between the parties. In subsequent years, a pricing formula will be used to set the price of the venture car sold to GM.

⁷ See, e.g., *Statement of the Federal Trade Commission Concerning Horizontal Mergers*, at 8 (June 14, 1982); R. Posner, *Antitrust Law*, at 55-61 (1976).

3.1.2 Half Cream

Minimum milk fat content: 10% m/m

Maximum milk fat content: less than 18%

m/m

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION**38 CFR Part 3****Monetary Allowance in Lieu of Headstone or Marker****AGENCY:** Veterans Administration.**ACTION:** Proposed Regulation Amendment.

SUMMARY: The Veterans Administration (VA) is proposing to increase the monetary allowance payable in lieu of a Government-furnished headstone or marker from \$67 to \$68. The need for this action results from the fact that the actual cost of a Government-furnished headstone or marker increased from \$67 to \$68. The effect of this proposed amendment would be to permit payment of up to \$68 in lieu of a Government-furnished headstone or marker.

The VA is also proposing to amend the time limits for filing of a claim for this monetary allowance. This action is necessary for consistency with the time limits for filing burial allowance claims. The intended effect is to allow claimants to file applications for this benefit within 2 years of the date on which a previously unacceptable discharge was upgraded.

DATES: Comments must be received on or before January 30, 1984. These changes are proposed to be effective October 1, 1983.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m., and 4:30 p.m. Monday through Friday (except holidays) until February 14, 1984.

Any person visiting Central Office for the purpose of inspection comments will be received by the Central Office Veterans Assistance Unit in Room 132. Visitors to a VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: Robert M. White, 202-389-3005.

SUPPLEMENTARY INFORMATION: Under 38 CFR 3.1612 the Veterans Administration

is authorized to pay a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of 38 CFR 1.631 (a)(2) and (b). The amount of the allowance is the lesser of the actual cost of acquiring a non-Government headstone or marker (or adding identifying information to an existing marker) or the average actual cost of a Government-furnished headstone or marker for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was furnished (or identifying information added).

The average actual cost to the Veterans Administration of headstones and markers furnished at Government expense for fiscal year 1983 (October 1, 1982 through September 30, 1983) was \$68. Consequently, we are amending § 3.1612(e) to reflect this information.

Under the provisions of 38 CFR 3.1601 claimants are permitted to file claims for the burial allowance within 2 years of the date on which a veteran's discharge was posthumously corrected by competent authority to reflect a discharge under conditions other than dishonorable. That regulation is based on 38 CFR 904, and since it would be inconsistent to permit claimants in that category to file for a burial allowance and not permit them to file for the monetary allowance in lieu of a Government-furnished headstone or marker, we are amending 38 CFR 3.1612(g) to make it consistent with the time limits for filing a claim for the burial allowance. This amendment applies only in situations when the veteran's character of discharge prior to correction prohibited the payment of this benefit.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Exec. Order 12291, Federal Regulation, we have determined that these regulatory amendments are non-major for the following reasons:

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

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

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

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program number is 64.101)

Approved: December 9, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended by revising § 3.1612 (e)(2)(ii) and (g) to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

(e) *Payment and amount of the allowance.*

(2) The amount of the allowance payable is the lesser of the following:

(ii) The average actual cost, as determined by the VA, of headstones and markers furnished at Government expense for fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual costs of headstones and markers furnished at Government expense for fiscal year 1982 (October 1, 1981 through September 30, 1982) is \$67 and for fiscal year 1983 (October 1, 1982 through September 30, 1983) is \$68 (38 U.S.C. 906(d)).

(g) *Claims.* A claim for payment under this section must be received by the VA within 2 years after the permanent burial or cremation of the deceased, or the date of purchase of the non-Government headstone or marker or the services for adding the veteran's identifying information on an existing headstone or marker, whichever date is later. In cases where the character of a veteran's discharge previously barred payment under this section, but where that discharge has been posthumously corrected by competent authority to reflect a discharge under conditions

other than dishonorable, a claim may be filed within 2 years from the date of correction of the discharge (38 U.S.C. 906(d)).

[FR Doc. 83-34471 Filed 12-28-83; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-2486-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Indiana on August 19, 1983, submitted a draft State Implementation Plan (SIP) for lead to be parallel processed in order to meet the schedule provided in the EPA and Natural Resources Defense Council (NRDC) Court Order dated July 26, 1983. This proposed SIP revision is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead.

The purpose of this notice is to announce receipt of Indiana's lead SIP, discuss the results of EPA's review, and propose rulemaking action on the Plan.

EPA in its review of the draft SIP noted several deficiencies. Specifically these deficiencies are the lack of an adequate ambient lead monitoring network in the vicinity of several stationary lead sources; the failure of the State to demonstrate attainment of the standard in areas where violations of the lead standard were measured since January 1, 1974; and the failure of the State to include process fugitive emissions in the emission inventory. Indiana committed itself on November 21, 1983 to correct these deficiencies and submit a plan which meets all requirements for an approvable lead SIP by April 1, 1984. If Indiana submits an approvable SIP, including submitting any necessary control strategies, EPA will repropose approval of the Indiana Lead SIP.

At this time, however, these deficiencies still remain and the plan cannot be proposed for approval. Therefore, today EPA is proposing to disapprove the Indiana lead SIP, with the exception of Indiana's lead new source review program which is being proposed for approval. If the State of Indiana fails to correct the deficiencies listed above by the time EPA takes final rulemaking, EPA will then disapprove

the entire lead SIP in the final rule and will propose to Federally promulgate a lead SIP for the State of Indiana.

DATES: Comments on this revision and on the proposed EPA action must be received on or before February 27, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. [It is recommended that you telephone Anne E. Tenner at (312) 886-6036 before visiting the Region V office]. U.S. Environmental Protection Agency, Air and Radiation Branch, Region V (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

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 and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (Act), requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in section 110(a)(2) of the Act and EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E and the Supplementary Guidelines for Lead SIP. These provisions require the submission of air quality data, emission data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the Act, and provisions for insuring maintenance of the NAAQS.

An attainment demonstration is required: (1) In the vicinity of primary lead smelters, secondary lead smelters, primary copper smelters, lead gasoline additive plants, and lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day that emit 5 or more tons of lead per year,

(2) in the vicinity of any other stationary source that emits 25 or more tons of lead per year, or (3) in any other area that has had measured lead concentrations in excess of the NAAQS for lead since January 1, 1974.

In addition, EPA established lead monitoring and data handling requirements (46 FR 44159) in a September 3, 1981, notice codified at 40 CFR Part 58. Indiana's response to all of these requirements are also addressed in this notice.

II. Indiana's Lead SIP

The State of Indiana submitted a draft SIP for the attainment and maintenance of the lead NAAQS on August 19, 1983. This plan includes a discussion of air quality data measured since 1980, an emission inventory of lead sources, and a rollback modeling analysis for one area. Indiana believed at this time that there were no lead sources in Indiana large enough to require an attainment demonstration and stated that there were no violations of the ambient lead standard recorded since 1980 in Indiana.

Air Quality Data and Monitoring

There were 14 lead monitoring sites operating in the State of Indiana as of December 31, 1982. The State submitted all available lead monitoring data for the period of 1969-1983, (including only first quarter 1983 data). Although these data show no violations of the lead standard, EPA is not convinced that the standard is being met in all areas of the State and notes that Indiana has not submitted all relevant data. Following the requirements for developing a lead SIP (40 CFR Part 51, Subpart E), EPA has considered all lead air quality data measured in Indiana since January 1974. These data show violations of the ambient lead standard at 2 sites in East Chicago (near Inland Steel and J & L Steel) in 1976, 1977, and 1979; at one site in Jeffersonville in 1978; at the Hessville Fire Station site in Hammond in 1977; and at one site in New Albany in 1978.

The Indiana Plan also addresses areas of the State where there are major lead sources having significant lead emission levels. According to the Plan, these geographic areas are:

A. Mobile Source Related Site

Borman Expressway (Indiana-912) east of Cline Avenue to a point west of Indianapolis Boulevard (Indiana-152/ U.S. 41.)

B. Stationary Source Related Sites

1. Quemetco (Indianapolis in Marion County), a secondary lead smelter;

2. G.M. Delco Remy (Muncie in Delaware County), a lead acid battery manufacturing plant;
3. Hammond Lead Product (Hammond in Lake County), a lead oxide manufacturing plant;
4. Inland Steel (East Chicago in Lake County), iron and steel manufacturing plant;
5. J & L Steel (East Chicago in Lake County), iron and steel manufacturing plant;
6. U.S. Steel Corporation (Gary in Lake County), iron and steel manufacturing plant;
7. Bethlehem Steel (Burns Harbor in Porter County), iron and steel manufacturing plant; and
8. Corning Glass (Bluffton in Wells County), a lead glass manufacturing plant.

Each of these areas are addressed separately below.

Mobile Source Related Site—The Frank Borman Expressway was included as a study area due to the high volume of vehicular traffic. This geographic area was not considered to be impacted by lead emissions from any industrial source. To demonstrate that this area is attaining the NAAQS, Indiana submitted a rollback analysis for this site. The analysis demonstrated that using the highest recorded ambient quarterly lead level of $0.80 \mu\text{g}/\text{m}^3$ (third quarter, 1982), the projected ambient lead concentration for 1985 is calculated to be $0.78 \mu\text{g}/\text{m}^3$. This shows that the lead standard was attained in this study area in 1982 and will be maintained through continuation of the Federal program to phase down lead in leaded gasoline.

It should be noted that EPA has also identified the Jeffersonville monitor as being a mobile source related site. There are no significant lead emitting point sources in the vicinity of this monitor. The major sources of lead are highway vehicle related. A rollback analysis was conducted previously by a contractor for EPA. The analysis demonstrated that using the highest recorded ambient quarterly average of $1.74 \mu\text{g}/\text{m}^3$ (fourth quarter, 1978), the estimated quarterly average in 1982 would be $0.67 \mu\text{g}/\text{m}^3$. The recent ambient air quality data verify that the standard for lead was attained at the Jeffersonville lead monitor in 1982 and will be maintained through continuation of the Federal program to phase down lead in leaded gasoline.

Stationary Source Related Sites—The Bluffton study area in the vicinity of Corning Glass Co., was identified to be a major significant lead source. However, no air quality impact analysis was conducted because the State

indicated that this source is permanently shut down. Indiana confirmed this in a November 21, 1983, letter to EPA. If the source will operate in the future, then Indiana confirmed it will be subject to New Source Review. Consequently, no control strategy is necessary for this source.

As to the geographic areas in the vicinity of U.S. Steel in Gary, and Bethlehem Steel in Burns Harbor, the emission inventory indicates that the current lead emissions from each of these sources are less than 25 tons/year. 40 CFR Part 51, Subpart E does not require a demonstration of attainment for these areas. However, the economic downturn in recent years experienced by these companies has affected the level of their emissions. Therefore, to assure that the SIP is adequate to maintain the standard, EPA is requiring the State to install and operate ambient lead monitors near these sources at locations agreed to by EPA. EPA is disapproving this portion of the plan unless Indiana installs and operates these monitors by the time EPA publishes its final rulemaking in the Federal Register.

Concerning the remaining five lead stationary sources listed, EPA can not complete its review and analysis of these study areas because the technical data submitted by Indiana is inadequate and incomplete. In a letter to EPA dated November 21, 1983, the State has committed to address these technical deficiencies and to provide the supplemental information needed by EPA to complete its evaluation. The State's commitments are summarized below for each of the five areas:

*Indianapolis—Marion County
(Quemetco)*

a. The State has committed to re-examine the emission inventory of this facility and will include fugitive emissions from the lead tapping operation and casting operation. If the revised emission inventory indicates that this secondary smelter is a "point source" (a secondary smelter that has potential to emit lead to the atmosphere greater than 5 tons/year), then the State commits to model the source and, if necessary, develop a control strategy.

b. The State will investigate the existing monitoring site for consistency with EPA lead siting criteria. If found to be unacceptable, then Indiana commits to move the monitor to a site acceptable to both EPA and the State to measure the impact of the lead emissions from Quemetco.

c. The State will confirm that the lead blast furnace at Quemetco is

permanently shut down. If so, then the State commits to treat this furnace as a new source subject to Indiana's New Source Review procedures and requirements, if this furnace is ever reactivated.

*Muncie—Delaware County
(Delco Remy)*

a. The State will investigate the adequacy of the existing control on the reverberatory furnace and will determine if the roof vent above the charging door has been permanently closed. If this vent no longer has a purpose, then the State will ask Delco Remy to seal it permanently. The State will inform EPA of the results of its investigation and request, and it will take any appropriate action required by EPA.

b. The State will evaluate further the adequacy of the existing monitors near Delco Remy. If the monitors operated by Delco Remy are determined to be adequately located, then Indiana commits to assure the quality of these data. If the monitors are found to be improperly located for lead monitoring, then the State commits to insure that a monitor is installed or relocated and is properly operated at a mutually acceptable site to measure the impact of lead emissions from Delco Remy.

*Hammond—Lake County
(Hammond Lead Products)*

a. The State will review and revise, as necessary, the emission inventory for Hammond Lead. This inventory will include the facility's fugitive emissions. Additionally, the emission inventory will take into consideration the lead emissions from the new plant that was recently constructed. Based on this revised emission inventory, the State commits to take any action required by 40 CFR Part 51 Subpart E.

b. The State will select a monitoring site consistent with EPA's lead siting criteria and commits to install and operate a monitor at a mutually agreed upon site to measure the impact of lead emissions from Hammond Lead Products. This commitment is based on the understanding that EPA will loan Indiana APCD a Hi-Vol monitor for this purpose.

*Burns Harbor—Porter County
(Bethlehem Steel)*

The State will determine a monitoring site consistent with EPA lead siting criteria and commits to insure that a monitor is installed and properly operated at a mutually agreed upon site to measure the impact of the lead emissions from Bethlehem Steel.

*East Chicago—Lake County
(Inland and J & L Steel)*

a. Indiana will submit all ambient lead monitoring data collected in Lake County, as well as the rest of the State, since the State began its analysis for lead in January 1977.

b. Indiana will evaluate all ambient lead data for its reliability and representativeness.

c. Indiana commits to provide a demonstration of attainment in any area that has had valid quarterly lead air concentrations in excess of the lead standard since January 1, 1974. This demonstration of attainment, if needed, will be based on the use of dispersion modeling.

[EPA emphasizes that *representative* ambient data that show a violation can be used by EPA to require development of a control strategy even if the data do not meet requirements for sampling frequency. To ignore a quarter of data simply because the applicable sampling criteria are not met violates the intent of EPA's monitoring guidelines. The sampling criteria were established mainly to ensure that findings of attainment (as distinguished from nonattainment) are sufficiently documented. This position was discussed in a May 3, 1983, memo from G.T. Helms, CPDD to Tom Harris, Region VIII entitled "Acceptance Criteria for Lead Data Used in Control Strategy Development."]

Schedule

Indiana will continue to work closely with EPA in parallel processing the Lead State Implementation Plan. All quality assured lead monitor data, whether from State, local, or industrial monitors, will be added to the National Aerometric Data Bank. Indiana expects to accomplish all the action items listed above by January, 1984. Additionally, Indiana commits to submit its final lead plan, on or before April 1, 1984. This should allow EPA to publish its final rulemaking on or before August 1, 1984.

As a result of these commitments submitted by the State, EPA will review and analyze any additional technical information submitted and will discuss and evaluate the revised emission inventory and all the control strategies necessary to implement the lead standard in a separate Federal Register notice of reproposal to be published if these deficiencies are corrected by the State.

In its review of all ambient monitoring data collected since 1974, EPA discovered that a violation of the standard occurred during the fourth quarter of 1978 at a site in New Albany

in Floyd County. This area was not included in any of the mobile source or stationary source related sites listed above due to the lack of sufficient emissions data. EPA must propose to disapprove the SIP for this area of the State unless the State submits information addressing this previously measured violation and demonstrates that the current SIP will ensure attainment and maintenance of the standard.

III. New Source Review (NSR)

The State indicated that the NSR requirement for the lead SIP will be satisfied by its revised permit Rule 325 IAC 2-1.1, which when adopted, will require that sources with potential emissions of 1 ton or more per year of lead must obtain a permit for the construction of new and existing sources. The State of Indiana will have a more stringent requirement for new sources than the Federal requirement. As a result, it is apparent that the Indiana lead SIP will have adequate NSR plan for lead. EPA proposes to approve this part of the lead SIP and will take final rulemaking action on this part of the lead SIP upon Indiana's submittal of its fully State approved 325 IAC 2-1.1.

IV. Monitoring Plans

On September 3, 1981 (46 FR 44159), EPA published its final rules pertaining to the Ambient Lead Monitoring and Data Handling, codified at 40 CFR Part 58. The rules call for the development of a State monitoring plan for lead and its inclusion into the surveillance and ambient monitoring program. These plans must meet EPA's monitoring requirements, must include scheduling requirements and requirements concerning the establishment of a monitoring network and data handling and reporting procedures.

On November 30, 1981, the State of Indiana submitted to EPA a revision to its SIP which provides for the establishment of an air quality surveillance network for lead. The submittal included a description of the proposed network and committed the State to the implementation of statewide State and Local Air Monitoring Sites Stations (SLAMS) and National Air Monitoring Sites Stations (NAMS) to meet the requirements of 40 CFR Part 58. All SLAMS lead sites in Indiana will be operated in accordance with the criteria given in subpart B of 40 CFR Part 58. Each SLAMS lead monitor will meet the siting criteria given in 40 CFR Part 58 Appendix E, Section 7. Methods used in the SLAMS will be referenced or equivalent as defined in 40 CFR Part 58,

Appendix C. The quality assurance procedures of Appendix A to 40 CFR Part 58 will be followed while operating SLAMS sites and processing air quality data.

The lead monitoring stations will be reviewed on an annual basis and modified as needed, to eliminate unnecessary sites or to correct inadequacies indicated by the annual review. All changes to the network will be discussed with EPA for prior approval. The annual SLAMS summary report will be submitted to EPA by July 1 of each year.

The monitoring SIP which was subsequently approved on July 8, 1983, designated 4 NAMS and also included 9 SLAMS for lead.

EPA reviewed the Indiana lead monitoring Plan and has determined that it meets all applicable requirements with the exception of 40 CFR Part 58, Appendix D, Section 2.7 which requires lead monitoring in the vicinity of significant lead sources. Previously in an October 19, 1983 letter, EPA informed the State that they were required to install lead monitors in these areas. For this reason, EPA is proposing disapproval of the revised Indiana Air Quality Surveillance Plan in today's Federal Register notice and will take final rulemaking action on this part of the lead SIP as soon as the State fulfills its commitment to install and operate an adequate ambient lead monitoring network in the vicinity of the lead sources identified in the SIP submittal.

V. Summary

EPA is proposing to disapprove the entire Indiana lead Plan unless the State of Indiana submits additional information correcting the deficiencies discussed above.

As soon as the State provides the supplemental information necessary to permit EPA to complete its evaluation, EPA will review the data and determine if it is adequate to satisfy the requirements for an approvable SIP. In a November 21, 1983, letter, The State of Indiana committed to correct these deficiencies and provide the supplemental information necessary by April 1, 1984. If these deficiencies are corrected then EPA will repropose to approve the Indiana lead SIP in a separate Federal Register to be published at a future date. If the State of Indiana fails to correct these deficiencies by the time EPA takes final rulemaking, EPA will disapprove the entire lead SIP by the time EPA publishes its final rulemaking on August 1, 1984 and will propose to federally

promulgate a lead plan for the State of Indiana by October 1, 1984.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP disapproval actions do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291, today's action is "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Lead, Particulate matter, Carbon monoxides and Hydrocarbons.

(Secs. 110, 301 and 319, Clean Air Act, as amended (42 U.S.C. 7410, 7601 and 7619))

Dated: November 30, 1983.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 83-34456 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AD-FRL-2499-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Minnesota on April 28, 1983, submitted a State Implementation Plan (SIP) for lead. This SIP is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead.

The purpose of this notice is to announce receipt of Minnesota's lead SIP, discuss the results of EPA's review, and propose rulemaking action approving the plan as meeting all the applicable Federal requirements with the exception of those requirements which apply to new sources of lead emissions. The lead New Source Review Plan will be addressed in a separate Federal Register notice to be published at a future date when action is taken on Minnesota's overall New Source Review Plan.

DATES: Comments on this revision and on the proposed EPA action must be received on or before January 30, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you

telephone Anne E. Tenner at (312) 886-6036 before visiting the Region V office).

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Minnesota Pollution Control Agency, Division of Air Quality, 1935 West County Road B-2, Roseville, Minnesota 55113.

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 and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (Act) requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in Section 110(a)(2) of the Act and EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E and supplementary guidelines for lead SIPs. These provisions require the submission of air quality data, emissions data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the Act, and provisions for insuring maintenance of the NAAQS.

The requirements specify that all stationary sources specified under those source categories listed in 40 CFR Part 51 and any other stationary sources which emit 25 tons/year or more of lead or lead compound must be analyzed to determine their impact on the lead NAAQS. In addition, EPA established ambient lead monitoring and data handling requirements (46 FR 44159) in a September 3, 1981 notice, codified at 40 CFR Part 58. These requirements are also addressed in this notice.

II. Minnesota's Lead SIP

The State of Minnesota submitted a SIP for the attainment and maintenance of the lead NAAQS on April 28, 1983.

Minnesota's plan includes a discussion of air quality data measured since 1977, an emissions inventory of lead sources, atmospheric dispersion modeling analyses, and the necessary control strategies. There were 14 lead monitoring sites operating as of December 31, 1981 in the State of Minnesota. The State submitted all available lead monitoring data for the period of 1977 to 1981. The five years of data showed violations of the ambient lead standard at five monitoring locations. Of the sites showing violations, one is primarily mobile source related and the other four are primarily point source related.

The Minnesota plan addresses areas of the State where these monitored violations of the lead standard have been recorded. According to the plan these areas are:

A. Mobile Source Related Site

1. Interstate (I) 35 W and 70th Street site (Richfield).

B. Stationary Sources Related Sites

1. Union Scrap Company (Minneapolis);
2. Taracorp, Inc. (Saint Louis Park);
3. Gopher Smelting and Refining Company (Eagan); and
4. Gould, Inc. (St. Paul).

The monitored violations recorded at these sites were addressed by the plan in the following manner.

Violations of the lead NAAQS were recorded at the I-35W site in 1978 and 1979. However, no subsequent violations have been recorded. To demonstrate that this area is now attaining the NAAQS, Minnesota performed a rollback analysis for this site. That analysis demonstrated that, due to the Federal program to reduce the levels of lead in gasoline and due to the steady decrease in the number of vehicles able to use leaded fuel, the lead standards were attained at this site by 1982. Minnesota projected that the lead standards will be maintained through continuation of the Federal program to phase down lead in gasoline.

With respect to the violations recorded at the first two of the stationary source sites listed above, Minnesota documented that Union Scrap Company and Taracorp, Inc. have been shut down. According to a letter dated December 2, 1982, which had been submitted to EPA as part of the Minnesota lead SIP, the Union Scrap Company vacated its lead recovery operation and demolished its building on November 3, 1982. In addition, on May 19, 1982, Taracorp, Inc. discontinued operations of its secondary

lead smelter located in Saint Louis Park, and subsequently lost the zoning classification which permitted it to operate at that location. The property cannot be reused for lead smelting or casting operations under the Saint Louis Park Zoning Ordinances. Therefore, Minnesota did not develop control strategies for these facilities and these sites are no longer showing monitored violations of the lead NAAQS.

The remaining two stationary source related sites listed above are associated with lead sources which are currently in operation. Minnesota developed control strategies for these sources. Gould, Inc. in Saint Paul, Minnesota and Gopher Smelting and Refining Company in Eagan, Minnesota. Dispersion modeling was used to predict ambient lead concentrations at both of these sites.¹

This modeling, combined with rollback analyses using lead monitoring data and actual lead emissions, was used to develop control strategies adequate to attain and maintain the lead standards for Gould, Inc. and Gopher Smelting and Refining Company. The control strategies are contained in enforceable operating permits which MPCA issued to these two sources.

The permits limit stack emissions to actual status quo levels for both Gould and Gopher Smelting and Refining Company. The permits also contain fugitive dust control measures. These measures consist of vacuum sweeping road surfaces daily, clean-up requirements for exterior and interior spills, exterior surface cleaning, regular replacement of baghouse filters, scrap storage handling requirements, slag handling procedures, mobile equipment cleaning requirements, sealing of building openings, and operation and maintenance requirements for the off-gas cooling system. The permits require full implementation of the control measures by August 15, 1984 at Gould, Inc. and by August 1, 1985 at Gopher Smelting and Refining Company.

Because the State's modeling analysis demonstrates that full implementation of the control measures will provide for the attainment and maintenance of the NAAQS and because all control measures will be implemented within three years of EPA's final rulemaking, EPA is proposing approval of the State's lead SIP attainment demonstration.

¹ Minnesota used the Climatological Dispersion Model (CDM) to predict ambient lead concentrations in the vicinity of Gould, Inc. and Gopher Smelting and Refining Company, Inc. Since the emission inventory was not considered to be complex, it was not necessary to require a more sophisticated modeling approach like the Industrial Source Complex Model (ISC), which is the EPA approved guideline model for lead SIPs.

To provide assurance that the standards will be maintained in these areas the State informed EPA in a November 28, 1983 letter that an improved monitoring program for both Gopher Smelting and Refining Company and Gould Inc. was implemented at these sites through the installation of two monitors at these sites.

III. Monitoring Plans

On September 3, 1981 (46 FR 44159), EPA published its final rules pertaining to Ambient Lead Monitoring and Data Handling, codified at 40 CFR Part 58. The rules call for the development of a State monitoring plan for lead and its inclusion into the surveillance and ambient monitoring program. These plans must meet the requirements detailed in the September 3, 1981 notice and must include scheduling requirements and requirements concerning the establishment of a monitoring network and data handling and reporting procedures.

On December 10, 1981, the State of Minnesota submitted to EPA a revision to its SIP which provides for the establishment of an air quality surveillance network for lead. The submittal included a description of the proposed network and committed the State to the implementation of statewide State and Local Air Monitoring Sites Stations (SLAMS) and National Air Monitoring Stations (NAMS) to meet the requirements of 40 CFR Part 58. All SLAMS lead sites in Minnesota will be operated in accordance with the criteria given in subpart B of 40 CFR Part 58. Each SLAMS lead monitor will meet the siting criteria given in 40 CFR Part 58 Appendix E, Section 7. Methods used in the SLAMS will be reference or equivalent as defined in 40 CFR Part 58, Appendix C. The quality assurance procedures of Appendix A to 40 CFR Part 58 will be followed while operating SLAMS sites and processing air quality data.

The lead monitoring system will be reviewed on an annual basis and modified, as needed, to eliminate any unnecessary sites or to correct inadequacies indicated by the annual review. All changes to the network will be discussed with EPA for prior approval. The annual SLAMS summary report will be submitted to EPA by July 1 of each year.

The State's monitoring SIP was submitted to EPA on March 5, 1980, with an amendment to the revision submitted on June 2, 1980. The monitoring SIP which was subsequently approved on March 4, 1981 (46 FR 15138), designated two NAMS and also included 16 SLAMS for lead. After subsequent annual

review of lead monitoring as required by 40 CFR Part 58, the State revised its network to five SLAM sites statewide as of January 1, 1983.

EPA reviewed the Minnesota lead monitoring Plan and has determined that it meets the requirements of Sections 110 and 319 of the Act. Therefore, EPA is proposing approval of the revised Minnesota Air Quality Surveillance Plan in today's Federal Register notice.

IV. New Source Review

EPA proposes to approve the Minnesota New Source Review program for lead, contingent upon (1) receipt by EPA of a demonstration from the State that the term "applicable pollution control statutes and regulations," which appears in APC-3 (the State's permitting authority), includes the authority to review construction permit applications against the Federal NAAQS for lead and (2) EPA's final approval of amended APC-3. APC-3 as amended, which was submitted to EPA on January 5, 1981, is the general permitting authority for the State and applies to sources of lead less than 5 tons per year.

On July 29, 1982 (47 FR 32742) EPA proposed to approve amended APC-3 and will take final rulemaking action on their regulation before or at the same time EPA takes final rulemaking action on their lead SIP.

V. Summary

EPA has evaluated the Minnesota lead plan by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned Code of Federal Regulations. EPA has found the plan to be approvable, however the New Source Review plan needs additional clarification as discussed above.

This clarification must be submitted by the time EPA must take final rulemaking on the lead SIP by August 1, 1984. The State agrees that the clarification must be submitted before EPA takes final action and is currently working toward providing it.

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

Under 5 U.S.C. Section 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, Intergovernmental relations.

(Secs. 110, 301 and 319, Clean Air Act, as amended (42 U.S.C. 7410, 7601 and 7619))

Dated: November 18, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 83-94455 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[NE 1418; AD-FRL-2486-7]

Approval and Promulgation of Implementation Plans, Nebraska; Lead Implementation Plan—Omaha

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is today proposing to take action on a draft State Implementation Plan (SIP) for lead submitted on November 17, 1983, by the State of Nebraska for Omaha. Based on the submittal, portions of the Omaha lead SIP are proposed to be approved and other portions are proposed to be disapproved as identified below. The public is asked to comment on the proposed action.

DATES: Comments on this proposal must be received by February 27, 1984 in order to be considered.

ADDRESSES: Written comments should be sent to Dwayne E. Durst in EPA Region VII's Air Branch (See EPA Region VII address below). Copies of the materials submitted by Nebraska and a technical support document prepared by EPA may be examined during normal business hours at the following locations: Environmental Protection Agency, Region VII Air Branch, Room 1415, 324 East 11th Street, Kansas City, Missouri 64106; Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Dwayne E. Durst at EPA Region VII Air Branch or call (816) 374-3791, FTS 758-3791.

SUPPLEMENTARY INFORMATION:**I. Background**

The general requirements for a SIP are outlined in Section 110 of the Clean Air Act (CAA), and in EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are contained in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the

National Ambient Air Quality Standard (NAAQS), a demonstration that the standard will be attained within the time frame specified by the CAA, and provisions for maintenance of the standard by reviewing new or modified lead sources.

On January 9, 1981, the Governor of Nebraska submitted the Nebraska lead SIP to EPA for approval. On August 29, 1983 (48 FR 39089), EPA proposed to approve all parts of the Nebraska lead SIP, except the portion of the plan pertaining to Omaha. The reader is referred to the August 29, 1983, *Federal Register* for a discussion of the contents of the plan. Final approval of the Nebraska plan, except for Omaha, was published on November 29, 1983, at 48 FR 53697. This proposed rulemaking deals solely with the lead SIP for Omaha, which is the portion of the Nebraska lead plan excluded from the approval cited above.

Even though the state included a proposed control strategy for Omaha in the January 9, 1981, SIP submittal, that strategy was not adequate to show attainment and maintenance of the lead standard in the vicinity of two point sources. Air quality data collected at two approved monitoring stations in the vicinity of these point sources indicated that the lead standard was exceeded during the years 1978, 1979 and 1980. In fact, twelve of the twenty quarters of data collected at these stations during that period were above the 1.5 microgram per cubic meter ambient standard for lead. Since 1981, the lead standard has been exceeded only one quarter at each of the approved stations. These improvements resulted from closure of one of the point sources (a secondary lead smelter) and improved controls at the other source (a lead refinery).

The two point sources in Omaha are located northeast of the central business district on the banks of the Missouri River. The area is dominated by light industrial and commercial operations, including warehouses and a railroad repair yard. There are no residences located in the immediate vicinity of the point sources.

Because the control strategy for Omaha contained in the state lead SIP did not show how the lead standard would be met, EPA requested that the State of Nebraska revise that portion of their plan. The emission inventories for the point sources were revised and dispersion modeling for the area was rerun. Because one of the point sources, the secondary lead smelter, was not expected to reopen, their emissions were not included as input to the dispersion model predictions. Even

without the emissions from the secondary lead smelter, this revised modeling was submitted on August 5, 1983, and still predicted violations of the lead standard immediately next to the property line of the lead refinery. There were no monitors near the point where the maximum concentration was predicted and because of railroad tracks and other physical obstructions, the state could not locate an acceptable site for a monitor. Thus, the state was informed that dispersion modeling meeting the requirements of U.S. EPA "Guideline on Air Quality Models," would be required for developing the control strategy in Omaha. The modeling which the State of Nebraska had performed did not meet these requirements, primarily because five years of meteorological data were not used in performing the modeling. On-site meteorological data was gathered and compared to National Weather Service data collected at the Omaha airport. It was determined that quarterly frequency distributions for the on-site data compared favorably with data collected at the airport, and therefore, future modeling would use airport data.

II. Omaha Control Strategy Reevaluation

The State of Nebraska initiated a reevaluation of the Omaha control strategy in early 1983. Contract assistance was provided to the state to complete the reevaluation. An updated and refined emission inventory was prepared, based upon an inspection of the sources. Using the revised inventory data, modeling was performed using the Industrial Source Complex Long Term (ISCLT) model. Five years of meteorological data (1978-1982) were used to perform twenty separate model reruns. The results of the modeling as submitted by the state indicate that the air quality standard was exceeded. The state has informed EPA that there may be some minor adjustments in the modeling results. The point of maximum concentration is predicted to occur at a point approximately 100 meters north, northeast of the lead refinery. This location is slightly different than the point where the state had predicted the maximum concentration in the modeling they performed in 1981.

The modeling shows that the monitoring sites which are presently established are well positioned to define the limits of the area where the lead standard is expected to be exceeded. The area where the maximum concentrations are predicted by the revised modeling is accessible, and it appears a monitor could be located there. The State of Nebraska plans to

establish a monitoring station on property owned by the City of Omaha and located near the point where maximum lead concentrations are predicted to occur. This station will be established so that data collection can commence on January 1, 1984. Lead monitoring is conducted in Omaha by the Omaha-Douglas County Health Department. A description of the complete monitoring network may be inspected at the Health Department offices located at the Omaha-Douglas Civic Center, Room 705, 1819 Farnam Street, Omaha, Nebraska 68183.

The emissions from the Gould secondary lead smelter were not included in the reevaluation. The plant has been closed for nearly two years and is not expected to reopen. Nebraska has issued an Administrative Order to the company which deals with the plant closure. In the event that the plant would reopen, the Order requires that the company obtain a permit before resuming operations. The Order states that a permit would be issued only if it is determined that emissions from the plant will not cause or contribute to a violation of the lead standard. Based on the Administrative Order, EPA considers the plant to be permanently shut down. If the Nebraska Order is approved by EPA in the final rulemaking on the Omaha lead SIP, the source will be in violation of the SIP upon resuming operation, unless it demonstrates that it will not impact or cause violations of the lead standard, and obtains a permit prior to operation, containing enforceable requirements to ensure that it will not cause or contribute to such violations.

While certain controls are in place at the lead refinery to reduce lead emissions, modeling shows that additional controls will be needed to meet the standard. The existing controls were included as part of the state's particulate matter SIP which has previously been approved by EPA, and thus, their continued operation is enforceable under existing state regulations. The state is also developing additional lead control measures which they plan to include in the Omaha lead SIP.

On November 29, 1983, EPA approved Nebraska Rules 3 and 4, which provide for review of new or modified lead sources with greater than 5 tons of lead per year. Those rules apply statewide and are thus already approved for the entire state, including the Omaha area.

However, the rules do not clearly specify how much modification a 5 ton per year lead source must undergo in order to require a review. EPA requests

the State of Nebraska to clarify this issue.

Proposed Action

EPA has evaluated the submittals from the State of Nebraska concerning the lead SIP for Omaha. Specifically, EPA proposes to approve the materials as meeting the following regulations: 40 CFR 51.81, Emissions Data, 51.82, Air Quality Data, and 51.84 Dispersion Modeling for Point Sources. Because the submittals lack specific control measures, EPA proposes to disapprove the Nebraska lead SIP for Omaha as not meeting 40 CFR 51.80, Demonstration of Attainment and 51.87, Control Measures.

This action is being proposed under the "parallel processing" procedure (47 FR 27073). If the revisions which the State of Nebraska submits in final form differ substantially from the material already submitted, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking (NPR).

The Administrator's final decision to approve or disapprove the Nebraska lead SIP for Omaha will be based on whether it meets the requirements of Sections 110(a)(2) (A) through (K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

Implications of Action

EPA recently reached agreement with the Natural Resources Defense Council (NRDC) and other plaintiffs who filed a citizens suit under Section 304(a) of the Clean Air Act. The suit, *NRDC v. Ruckelshaus*, No. 82-2137 (D. D.C.), concerned the action EPA must take on lead implementation plans. Further information on the Settlement Agreement and Consent Decree appears in the *Federal Register* of August 10, 1983 (48 FR 36250). The Settlement Agreement and Consent Decree established specific deadlines for competition of SIPs for lead. This proposed action on the Nebraska lead SIP for Omaha is consistent with that Settlement Agreement and Consent Decree. Under the Agreement, EPA must provide opportunity for public comment, and publish final action on its proposed disapproval of Nebraska lead SIP by August 1, 1984. If EPA's final action is to disapprove any part of the state submittal, the Agency must propose a Federal Implementation Plan (FIP) for Nebraska by October 1, 1984.

The Agreement provides for EPA to review state plan revisions (to correct deficiencies) that are submitted after an EPA proposed disapproval. If, at any time, a state covered by the Agreement, such as Nebraska, that did not submit

an acceptable plan in accordance with the timetable set forth in the Agreement, submits an approvable revision to its lead SIP, EPA may propose approval of that plan revision in lieu of a FIP. EPA, however, must have taken final action on such a plan before the deadlines specified in the Agreement in order not to have to propose or promulgate a FIP for the state.

Also, if in the future, a state covered by the Agreement submits an approvable plan after EPA has promulgated a FIP for that state, EPA may, at that time, withdraw its plan and simultaneously substitute the approved state plan.

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.) This proposed action to disapprove a portion of the Nebraska lead SIP for Omaha will not have a significant economic impact on any small entities.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget for review. Any comments from OMB and EPA and any response are available for public inspection at the EPA Region VII Office (see address above).

List of Subjects in 40 CFR Part 52

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

(Sec. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: November 30, 1983.

Morris Kay,

Regional Administrator.

(FR Doc. 83-3460 Filed 12-29-83; 8:45 am)

BILLING CODE 6560-50-M

40 CFR Part 52

[AD-FRL-2497-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Illinois submitted on September 30, 1983, a State Implementation Plan (SIP) for lead. This revision to the SIP is designed to provide for the attainment and maintenance of the National Ambient

Air Quality Standards (NAAQS) for lead in the Granite City area.

The purpose of this notice is to announce receipt of Illinois' lead SIP, to discuss the results of EPA's review, and to propose rulemaking action. EPA is today proposing to approve the plan as meeting all applicable Federal requirements, with one exception. The SIP is currently deficient in that it does not contain an enforceable mechanism to implement the control strategy. The State of Illinois has made a commitment to work with EPA to correct this deficiency. If the State of Illinois submits an approvable enforceable mechanism before EPA publishes a final rule on the lead SIP, EPA will approve the lead plan. If there is no enforceable mechanism submitted, EPA will disapprove the entire lead SIP in the final rule and propose to federally promulgate an enforceable lead control strategy not later than in the October 1, 1984, Federal Register.

DATES: Comments on this revision and on the proposed EPA action must be received by February 27, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Anne E. Tenner at (312) 886-6036 before visiting the Region V Office).

U.S. Environmental Protection Agency,
Air and Radiation Branch, Region V
(5AR-26), 230 South Dearborn Street,
Chicago, Illinois 60604

Illinois Environmental Protection
Agency, Division of Air Pollution
Control, 2200 Churchill Road,
Springfield, Illinois 62706

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 and Radiation Branch, Region V (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:
Anne E. Tenner, (312) 886-6036.

SUPPLEMENT INFORMATION:

I. Background

On October 5, 1978, EPA promulgated the National Ambient Air Quality Standards (NAAQS) for lead (43 FR 56258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$), maximum arithmetic mean, as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (Act), requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in Section 110(a)(2) of the Act and EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the Act, and provisions for insuring maintenance of the NAAQS.

In the March 22, 1982, Federal Register (47 FR 12164), EPA approved the Illinois lead SIP in all areas of the State with the exception of the Granite City, Madison and Venice Geographic areas in Madison County. EPA approved the Illinois lead SIP, with the understanding that the State would, at a later date, develop a control plan for the Granite City area which would assure attainment and maintenance of the NAAQS.

On September 30, 1983, the State of Illinois submitted a lead plan to EPA which proposed to assure attainment and maintenance of the NAAQS in the Granite City area. The Illinois plan includes a discussion of air quality data measured since 1978, an emission inventory of three source categories capable of emitting lead, atmospheric modeling analyses, and proposes necessary control strategies.

In developing the point sources emission inventory, the State identified three stationary sources that have the potential to emit lead. These sources are Taracorp Industries, St. Louis Lead Recyclers, and Granite City Steel. The emissions inventory shows that only Taracorp is large enough to qualify as a "point source", a stationary source emitting lead in excess of 5 tons/year. In projecting future lead emissions, the State assumed that none of the lead sources would expand. The assumption that emissions would remain approximately the same appears to be reasonable in light of the recent economic downturn that affected the major lead sources in the Granite City area.

II. Monitoring

The State of Illinois has monitored ambient levels of lead at Granite City since mid-1978. The locations of these four monitoring sites are: Roosevelt and Rock Roads, 20th Street and Adams, 1733 Cleveland and, finally, 15th Street and Madison.

The four monitored sites have exceeded the Federal and State lead standard of $1.5 \mu\text{g}/\text{m}^3$ as a quarterly arithmetic average. The highest recorded quarterly average in Illinois was $7.3 \mu\text{g}/\text{m}^3$, in the fourth quarter of

1981, monitored at the 15th and Madison Street monitoring site. This site has recorded 14 violations of the ambient lead standard during the period 1978 through 1982. These are the most violations of the lead standard recorded at any monitoring site in Illinois.

III. Air Quality Analysis and Control Strategies.

The State's air quality analysis of the proposed control strategies consisted of Industrial Source Complex Model (Short-term version) (ISCST) modeling using 5 years of meteorological (MET) data, 20 receptors providing 0.25 km resolution around Taracorp, and a representative background level of $0.28 \mu\text{g}/\text{m}^3$ (based on 1981 data from the four Madison County monitors located outside of Granite City). Initial analyses demonstrated that the present level of control for particulate Rule 203(f), 203(a) and 203(b) is not sufficient to protect the lead NAAQS.

Two control strategies (Strategy 6 developed by the State and Strategy 7 developed by the affected industries) were shown by the modeling to be adequate to attain the NAAQS for lead in the Granite City area. The maximum predicted concentrations were $1.40 \mu\text{g}/\text{m}^3$ under Strategy 6 and $1.32 \mu\text{g}/\text{m}^3$ under Strategy 7 at a receptor located 25 meters west of the 15th and Madison monitor. The industry strategy appears to result in lower ambient lead levels and will be less costly than the State strategy. It should also be noted that the industry strategy will result in lower allowable emission in the Granite City area (15.97 tons/year) than the State's strategy (18.44 tons/year). Therefore, IEPA has identified Strategy 7 as the primary control program for the Granite City area. A detailed description of strategy 7 may be found in the September 30, 1983, State submitted and technical support document which is available for review in the Region V office and IEPA office.

The technical analysis of the Illinois lead plan for the Granite City area identified sources having significant impact upon the air quality for lead. According to the plan, these sources are:

A. Mobile Sources

1. Route 3;
2. Route 19th;
3. Route 22nd Street;
4. Madison Avenue; and
5. Niederinghaus Avenue

B. Area Sources

1. Taracorp waste piles;
2. St. Louis Lead Recycler; and
3. Tri-City Trucking.

C. Stationary Sources

1. Taracorp Industries;
2. St. Louis Lead Recyclers; and
3. Granite City Steel.

The State indicated that the lead emissions related to mobile sources have a minor impact upon the lead air quality in the Granite City study area. The phase down of lead in leaded gasoline will further reduce the lead contribution of the mobile sources and, therefore, a no additional control measure is necessary.

Finally, mobile sources are controlled through the Federal programs to improve fuel economy and the phase down of lead as an additive in gasoline. These programs will bring about a decline of the ambient concentrations of lead at the sites where high concentrations have been measured. The reduction of lead emissions are calculated to fall from 10.68 tons/year in 1978 to 4.39 tons/year in 1985 which would be equivalent to a reduction of 59% of lead emissions related to mobile sources. The State is relying on this strategy for the bulk of the reductions of lead emissions, and future violations of the lead standard are not expected.

The State intends to adopt specific control requirements for Taracorp, St. Louis Lead Recyclers and Tri-City Trucking, the stationary sources, using Strategy 7.

The control strategy for tarcorp is as follows: Taracorp has proposed to discontinue the operation of the blast furnace, the rotary furnace, the batch mixer in mixed metals "A" and the battery breaking operations. Taracorp would also reduce the lead throughput of mixed metal B department to 30 percent of the maximum throughput currently permitted not to exceed 3160 tons produced per calendar quarter.

The date for implementation of Tarcorp's fugitive dust control plan will be incorporated as part of the enforceable mechanism to be submitted by the State, upon the determination of an enforceable control strategy.

In addition, the plan contains a fugitive dust control plan for Taracorp which includes the following measures: Cover the slag/waste pile with plastic liner, limestone, and dirt on which a vegetative cover would be planted; seed and vegetate all non-traffic unpaved areas of plant grounds, or treat with asphaltic coating where a vegetative cover is not applicable; vacuum sweep all paved areas; and implement a fugitive dust control plan for process sources. Further discussion on this issue may be found in the September 30, 1983, State submittal, which is available for

review at the Region V office, or at the IEPA office in Springfield.

The control strategies for St. Louis Lead Recycling and Tri-City Trucking consist of implementing a fugitive dust control plan for non-process sources. The fugitive dust control plan involves paving or asphalt treatment of traffic and non-traffic open areas, erection of fences around the property lines and application of a water surfactant spray system for dust suppression. The date for implementation of these fugitive dust control plans will be incorporated as part of the enforceable mechanism to be submitted by the State upon the determination of an enforceable control strategy.

The State's modeling analyses show that, when these control measures are implemented, the lead standard will be attained in the Granite City area. Therefore, EPA is proposing approval of the State's proposed, adopted source specific control strategy and the fugitive dust control measures discussed above.

IV. New Source Review

The State indicated that the New Source Review (NSR) requirement for the lead SIP is satisfied by the existing Rule 103 which requires a permit for the construction of any new and existing sources. None of the exempted sources from Rule 103 have the potential to emit lead.

Recently, Illinois adopted the Federal air quality standard for lead. Rule 313 (air quality standard for lead) would subject all sources that have potential to emit lead for review under Rule 103. Therefore, EPA finds that the Illinois Lead SIP has an adequate New Source Review plan for lead. As a result, EPA has proposed to approve this portion of the plan.

V. Enforcement of Control Strategy

The Illinois Environmental Protection Agency shall follow the Illinois Environmental Protection Act, promulgated May 31, 1982, and the Illinois Pollution Control Board Procedural Rules, promulgated February 21, 1980, for conducting inspections and investigations of violations of any part of the final control strategy for lead. These include the referral of violations of the lead control strategy to the Office of the Illinois Attorney General for submittal to the Illinois Pollution Control Board for administrative resolution or for preparation for litigation. A copy of these documents are available for examination at the Region V Office or at IEPA, 2200 Churchill Road, Springfield, Illinois 62701.

VI. Enforceable Mechanism Deficiency in Lead SIP

In order for the strategy to be enforceable, Illinois proposed that consent decrees be entered with the lead sources named above so as to implement the control measures. However, this proposal is deficient due to these reasons:

1. The consent decrees were submitted to EPA in a draft form and have not yet been negotiated, nor have they been entered.

2. The draft consent decrees do not specify the reference method that will be used to determine compliance with the specified limits.

3. The draft consent decrees do not contain final compliance dates for when the specified emission limits will be achieved or when the proposed control measures will be implemented.

4. There is no present alternative approach provided if the companies fail to implement the requirements of the decrees.

5. The draft consent decrees do not specify what emission limits must be achieved upon the implementation of the proposed control measures.

Therefore, the SIP lacks an enforceable mechanism to implement the control strategy. This lack of signed consent decrees or any other enforcement mechanism is considered to be a major deficiency of the plan.

The State of Illinois may provide an approvable enforceable mechanism either in the form of a signed consent decree to be included in the SIP or a proposed SIP revision which adequately addresses the above deficiencies. If the State submits such a proposal, then EPA will approve, in the final rule, the lead plan in the Federal Register.

If the State of Illinois does not submit an approvable enforceable mechanism to satisfy this deficiency, EPA will publish a final disapproval of the entire Granite City area lead plan no later than the publication of the August 1, 1984, Federal Register. If EPA disapproves the lead SIP, EPA will also propose to federally promulgate a lead SIP in the Federal Register no later than October 1, 1984, as required by the Consent Decree, dated July 26, 1983, *Natural Resources Defense Council, et al., v. William D. Ruckelshaus, et al.*, Civil Action No. 82-2137 (D.D.C.).

VII. Monitoring Plans

On September 3, 1981 (46 FR 44159), EPA published its final rules pertaining to ambient lead monitoring and data handling, codified at 40 CFR Part 58. The rules call for the development of a State

monitoring plan for lead and its inclusion into the surveillance and ambient monitoring programs. These plans must meet the requirements detailed in the September 3, 1981 notice and must include scheduling requirements and requirements concerning the establishment of a monitoring network, and data handling and reporting procedures.

On November 25, 1981, the State of Illinois submitted to EPA a revision to its SIP which provided for the establishment of an air quality surveillance network for lead. The submittal included a description of the proposed network and committed the State to the implementation of statewide State and Local Air Monitoring Sites Stations (SLAMS) and National Air Monitoring Stations (NAMS) to meet the requirements of 40 CFR Part 58. All SLAMS lead sites in Illinois will be operated in accordance with the criteria given in Subpart B of 40 CFR Part 58. Each SLAMS lead monitor will meet the siting criteria given in 40 CFR Part 58 Appendix E, Section 7. Methods used in the SLAMS will be reference or equivalent as defined in 40 CFR Part 58, Appendix C. The quality assurance procedures in Appendix A to 40 CFR Part 58 will be followed while operating SLAMS sites and processing air quality data. The lead monitoring system will be reviewed on an annual basis and modified, as needed, to eliminate any unnecessary sites or to correct inadequacies indicated by the annual review. All changes to the network will be submitted to EPA for prior written approval. The annual SLAMS report will be submitted to EPA by July 1 of each calendar year.

The monitoring SIP which was subsequently approved on July 1, 1983, designated 2 NAMS and also included 10 SLAMS for lead.

EPA reviewed the Illinois lead monitoring plan and has determined that it meets the requirements of Sections 110 and 319 of the Act. Therefore, EPA is proposing approval of the revised Air Quality Surveillance Plan in today's Federal Register notice.

VIII. Summary

EPA is proposing to approve the Illinois lead plan for the Granite City Area. The lack of an enforceable mechanism however is considered to be a major deficiency in the Illinois Granite City Area lead plan. If the State of Illinois provides an approvable enforcement control strategy either in the form of signed consent decrees to be included in the SIP or a proposed SIP revision that will adequately address these deficiencies before EPA publishes

a final rule, then EPA will approve in the final rule the lead plan in the Federal Register. The state agrees that the deficiency must be corrected before EPA can finally approve the lead plan. The state is currently working on correcting the deficiency.

If, however, this major deficiency is not adequately satisfied at the time of final rulemaking, then EPA will disapprove the entire Illinois lead SIP for the Granite City area and propose to federally promulgate no later than October 1, 1984, in the Federal Register.

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].

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

(Secs 110 and 301 and 329 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601 and 7619)

Dated: November 28, 1983.
Valdas V. Adamkus,
Regional Administrator.
[FR Doc. 83-34462 Filed 12-29-83; 9:45am]
BILLING CODE 6560-50-M

40 CFR Part 52

[AD-FRL-2498-6]

Approval and Promulgation of State Implementation Plans; Revision to the Montana Lead Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA today is proposing to approve the Montana State Implementation Plan (SIP) for lead. This plan revision focuses on East Helena, the only area of the State where violations have occurred. The plan calls for the lead standard to be achieved in East Helena within three years of the date of EPA's approval of the plan.

Approval of this revision will enable Montana to continue its efforts to achieve and maintain the National Ambient Air Quality Standard for lead.

DATE: Comments must be received on or before January 30, 1984.

ADDRESSES: Written comments should be addressed to: John F. Wardell, Director, Montana Office, Environmental Protection Agency, Federal Building, Drawer 10096, 301 South Park, Helena, Montana 59626.

Copies of the materials submitted by the State and comments received on this

proposal may be examined during normal business hours at:

Environmental Protection Agency,
Montana Office, Federal Building,
Room 292, 301 South Park, Helena,
Montana 59626.

Environmental Protection Agency,
Region VIII, Air Programs Branch,
1860 Lincoln Street, Denver, Colorado
80295.

FOR FURTHER INFORMATION CONTACT:

Thomas O. Harris, Montana Office,
Environmental Protection Agency,
Federal Building, Drawer 10096, 301
South Park, Helena, Montana 59626,
(406) 449-5436.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the Environmental Protection Agency (EPA) promulgated a National Ambient Air Quality Standard (NAAQS) for lead. The standard was set at a level of 1.5 micrograms of lead per cubic meter of air, averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (The Act) as amended August 1977, requires each State submit a State Implementation Plan (SIP) which provides for the implementation, enforcement and maintenance of each the National Ambient Air Quality Standards within the State.

The basic requirements of a State Implementation Plan are outlined in 40 CFR Part 51, Subpart B. They include the submission of air quality data, emissions inventory data, air quality modeling results, a demonstration that the NAAQS will be attained in the time frame specified in the Clean Air Act, a demonstration of reasonable further progress toward attainment of the air quality standards, and provisions for ensuring ongoing compliance with the NAAQS. Specific requirements for developing lead implementation plans are outlined in 40 CFR Part 51, Subpart E.

II. Montana Plan

On September 29, 1983, the Governor of Montana submitted to the EPA the Montana State Implementation Plan for lead. The plan includes a strategy to achieve the NAAQS for lead within three years of the date that the plan is approved by EPA.

Ambient monitoring data collected by the State in population centers throughout the State during the period 1977-81, revealed that only one community recorded violations of the National Ambient Air Quality Standard for lead. That community was East Helena. Accordingly, the Montana lead

implementation plan focuses on attaining and maintaining the ambient lead standard in the East Helena area.

In developing the implementation plan for the East Helena area, the State with cooperation from ASARCO, undertook an intensive ambient air monitoring effort during the period 1980-81. The results of that effort were used in conjunction with source samples to carry out a receptor modeling exercise for the East Helena area. Source samples were obtained from within the ASARCO smelter complex and from within and adjacent to the City of East Helena. The results of the modeling were used by the State to identify the source emissions which will need to be reduced to bring the area into compliance with the NAAQS for lead. The principal sources of lead identified by the receptor model are: emissions from the smelter complex including fugitive emissions from the ore concentrate piles, and from the ore and zinc handling operations; process and fugitive emissions from the blast furnace operation; and fugitive soil and road dust emissions from the smelter complex and the City of East Helena and adjacent areas.

The strategy to control the emissions from those sources consists of the following:

1. Road and soil dust emissions—paving, chip sealing, chemical stabilization, and sweeping and flushing of various streets and roads in the City of East Helena and within the ASARCO smelter complex. All of the projects to control fugitive road dust and reentrained soil emissions except one are to be completed by December 21, 1983. The remaining project, the chip sealing of Highway 518 from Main Street in East Helena to Montana City will be completed by the Montana Department of Highways by December 31, 1986.

2. Fugitive emissions from ore handling and ore concentrate piles—installation of concrete divider walls and wind screens between ore concentrate piles, chemical stabilization of ore concentrate piles, relocation of some ore storage piles to provide greater protection from the wind, and geographic orientation of storage piles so as to minimize wind disturbance. All projects and activities to control fugitive emissions from ore handling and ore concentrate piles are to be completed and implemented by December 31, 1983.

3. Blast furnace emissions—installation of a controlled air feed system to the tuyeres of the No. 1 blast furnace not later than December 31, 1983 (the only other blast furnace has had a controlled air system since 1982); enclosure and ventilation of the sinter

stockpile and belt transfer system, and improved ventilation of the charge car area are to be completed not later than December 31, 1985; if necessary (as demonstrated by future monitoring and modeling efforts), ventilation of the tops of the blast furnaces to either a new baghouse or to the existing blast furnace baghouse not later than December 31, 1986.

4. Zinc Oxide handling—installation of a vacuum control system on the railroad car loading operation. Currently, because of economic conditions, the zinc oxide system is inoperative and may remain so for some time. However, the plan requires that the vacuum system be installed prior to resumption of the zinc oxide operation.

These control measures, when implemented, are expected to bring the area into compliance within three years or less of EPA's approval of the State's plan.

Section 51.81 Volume 40 of the Code of Federal Regulations (CFR) requires the submission of a lead emissions inventory as part of a State's lead implementation plan. This requirement contemplates the use of a dispersion model rather than a receptor model such as Montana used in the development of its plan. There is no need for an emissions inventory when a receptor model is used. In EPA's judgment the results obtained through use of the receptor model are equal or superior to the results which could have been achieved through use of a dispersion model. As a result, EPA is waiving the emissions inventory requirement of 40 CFR 51.81.

In tracking progress toward the achievement of the lead standard the State will continue to operate all of the monitoring sites at which violations of the standard have occurred. The sites and corresponding site numbers are as follows: Hastie (002), Hadfield (719), Firehall (714), and Dartman (724). All of these sites are within the City of East Helena.

With cooperation from ASARCO the State will carry out additional receptor modeling based, as a minimum, on ambient monitoring conducted during the fall and winter quarters of 1983-84. The purpose of this additional modeling will be to determine whether the blast furnace continues to be a significant contributor to the lead problem subsequent to the installation of the controlled air system to the tuyeres on the No. 1 blast furnace in the fall of 1983. Based on these additional studies, a determination will be made to either proceed with control of emissions from the tops of the blast furnaces or to require emission reductions from other

sources as dictated by the results of the receptor modeling.

Proposed Action

Based upon the foregoing, EPA is today proposing to approve the Montana State Implementation plan for the attainment and maintenance of lead.

Under 5 U.S.C. 605b, the Administrator has certified that SIP 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 52

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

(Secs. 110 and 301 Clean Air Act (42 U.S.C. 7410 and 7601))

Dated: December 23, 1983.

John G. Welles,

Regional Administrator.

[FR Doc. 83-34459 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[AD-FRL 2498-7; EPA Docket No. AW401PA]

Proposed Pennsylvania State Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice proposes the approval of a portion of the Pennsylvania State Implementation Plan (SIP) for the attainment and maintenance of the National Ambient Air Quality Standards for lead in Philadelphia.

The Pennsylvania Department of Environmental Resources (DER) submitted this SIP in a letter of August 29, 1983, in order to satisfy requirements of 40 CFR Part 51, Subpart E. This SIP is intended to demonstrate attainment of the ambient standard for lead within three years of its approval.

DATE: Comments must be submitted on or before February 27, 1984.

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. Environmental Protection Agency,
Air Management Branch, 6th &
Walnut Streets, Curtis Building,
Philadelphia, PA. 19106; ATTN: Chuck
Miesse (3AW11).

Pennsylvania Department of
Environmental Resources, Bureau of
Air Quality Control, 200 North 3rd
Street, Harrisburg, PA. 17120, ATTN:
Gary L. Triplett.

Philadelphia Department of Public
Health, Air Management Services, 500
South Broad Street, Philadelphia, PA,
19146, ATTN: William Reilly.

All comments on the proposed
revision submitted on or before
February 27, 1984 will be considered and
should be sent to: Mr. Glenn Hanson,
Chief, Pennsylvania/West Virginia
Section (3W11), Air & Waste
Management Division, U.S.
Environmental Protection Agency,
Region III, Curtis Building, 6th & Walnut
Streets, Philadelphia, PA. 19106.

FOR FURTHER INFORMATION CONTACT:

Mr. C. Charles Miesse at the address
listed for Mr. Glenn Hanson above, or at
(215) 597-3884.

SUPPLEMENTARY INFORMATION: The
Philadelphia portion of the Pennsylvania
State Implementation Plan (SIP) for lead
was submitted by Pennsylvania
Department of Environmental Resources
(DER) Secretary Nicholas DeBenedictis
on August 29, 1983. A public hearing
was held on June 15, 1983 on this SIP. In
addition, the Philadelphia Air
Management Services (AMS) has
indicated that it has the legal authority
necessary to implement this plan and
any control strategies related to it.

The National Ambient Air Quality
Standard (NAAQS) for lead was
promulgated on October 5, 1978 (43 FR
46269), along with the requirements for
lead SIP's. The plan which DER has
submitted is intended to satisfy these
requirements for Philadelphia. The
following paragraphs discuss these
requirements and the adequacy of the
State's SIP in meeting these
requirements.

1. Emissions Data

DER has submitted lead emissions
data for point and area sources. This
information was developed for 1981
emissions data. For point sources, DER
used information collected from source
reporting forms submitted under
Philadelphia's "Right to Know"
legislation. This inventory contains all
sources that emit 5 tons or more lead per
year.

The area source inventory includes
mobile and small stationary sources.
The estimates for mobile source
emissions, from exhaust and re-

entrained dust, were developed
according to procedures outlined in
EPA's "Supplementary Guidelines for
Lead Implementation Plans" (July, 1979).
The stationary area source emissions
were derived from data collected from
source reporting forms submitted under
Philadelphia's "Right to Know"
legislation.

Summary tables of the emissions
inventories above were included in the
SIP. The complete point source
inventory is available for inspection at
the AMS office listed in the
"ADDRESSES" section of this notice.

AMS has projected lead emissions
based on the above inventories, to
determine expected emission levels for
1985. For point sources, AMS used
known or expected changes where
information was available, or estimated
changes from projected changes in
employment levels in each area. For
area sources, DER used the same
methods for the projection year as for
the base year inventory.

2. Air Quality Data

AMS has submitted a summary of air
quality data which has been collected
since 1974. From this data, the Aramingo
Fire Station monitor which showed
violations was selected for further
analysis. EPA has reviewed this
information, and believes that the data
submitted is complete and accurate.
Although air quality data submitted with
the SIP indicated only a five percent
violation (1.57 ug/m³) during the third
quarter of 1982 at the Aramingo Fire
Station, air quality data for the third
quarter of 1983 indicated an unexpected
violation of 3.66 ug/m³ at this monitor.

Section 58.20(e) of Volume 40 of the
Code of Federal Regulations requires
States to submit a description of the
lead monitoring network to EPA.
Pennsylvania has submitted a network
description which has been approved by
EPA and will be reviewed annually to
ensure that the network is adequate to
meet air quality data requirements.

**3. Demonstration of Attainment/
Modeling**

Based on the emissions inventory and
air quality data in the SIP, AMS has
determined that the lead NAAQS of 1.5
ug/m³ averaged over a calendar quarter,
will be attained by December 31, 1983,
in all areas of Philadelphia except at the
Aramingo Fire Station.

The City has committed to further
study, additional ambient lead sampling,
and dispersion modeling using the
Industrial Source Complex model in the
vicinity of the Aramingo Fire Station
monitor (AFS).

4. Control Measures

The demonstration of attainment for
all areas except the vicinity of AFS
shows that the standard will not be
violated in 1983. This is based on
emission reductions which have
occurred from stationary sources, and
due to the decreased emissions of lead
from combusted gasoline. Therefore,
further control measures for these areas
are not required.

Pennsylvania has identified the
Associated Lead facility as contributing
to violations of the lead standard at the
AFS monitor, and has determined that
the major potential emission sources at
the plant have been controlled to a level
representing reasonably available
control technology (RACT). EPA will
validate whether the level of control is
indeed RACT. However, specific
enforceable additional control measures
providing for attainment in this area
have not been submitted. In lieu of a
commitment to specific measures, AMS
has committed to the following program
to be implemented upon EPA's approval
of the Philadelphia lead SIP:

1. Require additional plant evaluation
and source surveillance activities to be
conducted as Associated Lead,
including inventory of potential fugitive
emissions; conduct additional ambient
lead sampling around AL facility; make
an emissions-air quality impact
assessment using the Industrial Source
Complex (ISC) model; and require
development of additional control
measures and a schedule for
implementation (9-15 months after
NFRM).

2. Incorporate required additional
control measures into an appropriate
enforcement document. (12-18 months
after NFRM).

3. Implement control measures at
Associated Lead to effect compliance
with the NAAQS for Lead. (24-36
months after NFRM).

Additionally, the City's Consent
Agreement entered into with Associated
Lead must assure that all controls will
be operated and maintained in a manner
which assures continued compliance
with RACT requirements. Before EPA
approval of the Lead SIP for
Philadelphia, the signed agreement
which meets EPA requirements for Lead
SIP development must be submitted to
EPA prior to EPA final approval of the
Philadelphia Lead SIP. Under the U.S.
District Court for the District of
Columbia's Order of July 26, 1983 in
NRDC v. Ruckelshaus, No. 82-2137
(D.D.C.), EPA must take final rulemaking
action on this SIP by August 1, 1984.

5. General Requirements

Philadelphia currently has regulations which set forth procedures for review of new and modified sources of lead in order to prevent violations of the standard in the future.

AMS has committed to expend the resources necessary to implement this SIP.

A public hearing on the Pennsylvania Lead SIP was held on June 15, 1983. A summary of the comments was submitted by the State, with the AMS responses to the comments. EPA has reviewed the elements of the Philadelphia portion of Pennsylvania's State Implementation Plan for lead, and is today proposing approval of this Plan based on Philadelphia's commitment to develop and implement additional control measures at the Associated Lead facility.

The public is invited to submit, to the address stated above, comments on whether the Philadelphia portion of Pennsylvania's Lead SIP should be approved. The Administrator's decision to approve or disapprove the proposed SIP 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

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

(Secs. 110 and 301, Clean Air Act, as amended 42 U.S.C. 7410 and 7601)

Dated: December 7, 1983.

William T. Wisniewski,

Regional Administrator.

[FR Doc. 83-34458 Filed 12-29-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-10-FRL 2498-2]

Approval and Promulgation of State Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Propose rule.

SUMMARY: By this Notice EPA proposes to approve the Idaho State

Implementation Plan (SIP) for lead for all parts of the State except portions of Shoshone County. This proposal is based on a draft SIP submitted to EPA on December 7, 1983 and scheduled for final adoption by the State by January 30, 1984. Final approval will be based on submittal of an adopted SIP that is not significantly different from the draft. Upon final approval by EPA the lead plan will become a federally enforceable part of the SIP as required by the Clean Air Act (hereinafter referred to as the Act).

DATES: Comments must be received or postmarked on or before January 30, 1984.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Idaho, Department of Health and Welfare, 450 W. State Street, Statehouse, Boise, Idaho 83720.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101-3188.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442-4016, (FTS) 399-4016.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1983 the State of Idaho Department of Health and Welfare (IDHW) submitted a final draft lead SIP for EPA's review prior to public hearing and adoption. EPA's review comments are contained in a technical evaluation document (TED), which is available at the addresses shown earlier. EPA will provide IDHW with a copy of the TED to enter into the record at the public hearing scheduled for January 10, 1984.

Technical Evaluation

Lead SIP

The requirements for an approvable lead SIP are contained in 40 CFR Part 51 Subpart E. As described in the technical evaluation document (TED), the draft Idaho SIP satisfies all requirements for demonstration of attainment and maintenance through projections of air quality and emissions. In addition, the draft SIP provides for statewide review of all new or modified lead sources under its Rules and Regulations for the Control of Air Pollution in Idaho

(Section 1-1003) previously approved by EPA (47 FR 32350). These rules will ensure that no new violations of the lead standard will occur and that maintenance of the standard will continue.

Idaho has no significant point sources of lead in operation (i.e., those sources that emit from discrete points rather than from wide areas) and is currently attaining the lead standard in all areas of the State. (The only potential point source of lead is the presently shut down Bunker Limited lead smelter in Shoshone County, discussed in a later section of this notice.) Automobiles are the major contributors to lead emissions in the State. Federal regulations that limit the lead content of gasoline have resulted, and will continue to result, in a gradual decrease in lead emissions. Depending on the lead concentration in the base (historic) year, it is possible for such areas to attain the lead standard solely due to Federal regulations. Based on those Federal regulations and information about past and projected gasoline sales and assuming that lead concentrations decrease proportionately with automotive lead emissions, EPA has calculated critical lead concentrations for several base and attainment years. These were published in a July 1983 draft report entitled "Updated Information on Approval and Promulgation of Lead Implementation Plans" prepared for EPA Office of Air Quality Planning and Standards, Control Programs Development Division, Research Triangle Park, N.C. If the highest lead concentration for a given base year/attainment year combination is less than the critical value for that combination, EPA assumes that the standard will be attained by the attainment date. In 1977 Boise, Idaho had a worst case quarterly concentration of $1.64 \mu\text{g}/\text{m}^3$. The lead national ambient air quality standard is $1.5 \mu\text{g}/\text{m}^3$ averaged over a calendar quarter. Boise's worst case concentration is less than the critical concentration of $5.05 \mu\text{g}/\text{m}^3$ for the base year, calculated by EPA for an attainment date of 1983; therefore, EPA concludes that the standard is being, and will continue to be, attained in Boise and the remainder of the State of Idaho. The one significant point source in Idaho is a lead and zinc smelting complex, in Shoshone County, which has been shut down since early 1982 and will remain closed until it is economically feasible to operate. With the prospect that operation could resume at any time, a lead control strategy is being developed for that portion of Shoshone County surrounding

the bad smelter and will be added to the Statewide SIP at a later date.

Air Quality Monitoring

The SIP also contains a description of the current statewide lead monitoring network. EPA has reviewed the network and finds that it conforms with the EPA requirements in 40 CFR Parts 51 and 58. In addition the lead analysis techniques meets the requirements of 40 CFR Part 50.

Proposed EPA Action

Based on evaluation of IDHW's draft submittal, the Regional Administrator has determined that the Idaho lead SIP revision and lead monitoring program would meet the requirements of the Clean Air Act and 40 CFR Parts 51 and 58. Final EPA action will be based on the adoption and submittal of a SIP that does not differ significantly from the draft.

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).

Under Executive Order 12291, EPA must judge whether or not a regulation is "major" and therefore subject to the requirements of regulatory impact analysis. This regulation is not judged to be major, since it merely approves actions taken by the State and does not establish any new requirements.

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

List of Subjects in 40 CFR Part 52

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

(Secs. 110 and 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: December 6, 1983.

James R. Moore,

Acting Regional Administrator.

[FR Doc. 83-34464 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 21; AD-FRL-2498-8]

Approval and Promulgation of Implementation Plans; New Jersey Lead Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice proposes approval of a draft revision to the New Jersey State Implementation Plan (SIP) for attainment and maintenance of the national ambient air quality standards for lead in all areas of the State. The State of New Jersey has submitted this SIP as required by Section 110 of the Clean Air Act and an October 5, 1978 (43 FR 46246) Federal Register notice promulgating the lead standards. In determining the nature of its final rulemaking on this action, the Environmental Protection Agency will consider, along with the public comments it receives, the State's future responses and actions with regard to the resolution of issues that are identified herein.

DATES: Interested persons are invited to submit comments on this proposed action on or before February 27, 1984.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

Copies of the proposed revision are available for public inspection during normal business hours at:

Environmental Protection Agency,
Region II, Jacob K. Javits Federal
Building, 26 Federal Plaza, New York,
New York 10278

New Jersey Department of
Environmental Protection, Labor and
Industry Building, John Fitch Plaza,
Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT:
William S. Baker, Chief, Air Programs
Branch, Environmental Protection
Agency, Region II, Jacob K. Javits
Federal Building, 26 Federal Plaza, New
York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background.

On October 5, 1978, the Environmental Protection Agency (EPA) at 40 CFR 50.12 promulgated national ambient air quality standards for lead (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms per cubic meter of air (vg/m³) maximum arithmetic mean averaged over a calendar quarter. As required by Section 110 of the Clean Air Act and the October 5, 1978 promulgation, all States must submit a State Implementation Plan (SIP) which provides for attainment and maintenance of the lead standards. New Jersey has developed and submitted a draft of such a SIP.

The general requirements for the contents of a SIP are contained in Section 110 of the Clean Air Act, and in

EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are contained in 40 CFR Part 51, Subpart E. These provisions require the lead SIP to contain air quality data, emission data, an air quality modeling demonstration, control strategies for each area exceeding standards, a demonstration that the standards will be attained within the time frame specified by the Clean Air Act, and provisions for the review of new or modified lead sources for the purpose of maintaining the standards once they are attained. EPA has evaluated the New Jersey lead SIP by comparing it to these requirements for an approvable SIP.

II. New Jersey State Implementation Plan

On October 6, 1983, the Director of the Division of Environmental Quality of the New Jersey Department of Environmental Protection submitted to EPA a public hearing draft of New Jersey's SIP for attainment and maintenance of the national ambient air quality standards for lead. This draft SIP contains a demonstration of attainment of the standards and all necessary measures to attain the standards. It is anticipated that the State will hold a public hearing in January, 1984 on a draft SIP.

III. Results of EPA Review

Today's Federal Register notice provides the results of EPA's review of the New Jersey lead SIP. This information is presented under the following four headings:

- A. Emission Data;
- B. Air Quality Data and Monitoring System;
- C. Demonstration of Attainment; and
- D. Control Measures.

More detailed information concerning EPA's review of this SIP is contained in a Technical Support Document for today's proposal, which is available for public inspection at the locations identified in the "Addresses" section of this notice.

A. Emission Data

The SIP must contain a summary of the baseline and future year emission inventories. It must also contain an identification of all sources that emit five or more tons per year of lead.

The New Jersey SIP presents inventories of lead emissions by county and source type. These are provided for the years 1982, 1986 and 1990. The 1982 inventory is the baseline inventory and the 1986 and 1990 inventories are the projected attainment and maintenance

inventories. All stationary sources whose actual lead emissions are equal to or greater than five tons per year are classified by the State as point sources and are explicitly identified in its SIP.

Although the emission inventory identifies fugitive emissions associated with several sources, EPA believes that fugitive emissions at other sources may exist, in particular, those sources having secondary lead smelters. Consequently, EPA requests that the State provide the procedures it used in preparing its draft SIP to identify fugitive emissions and any appropriate modifications to its inventory.

EPA proposes to find that the emission inventories contained in the draft New Jersey SIP are approvable as meeting EPA's requirements provided that the State uses acceptable procedures for the identification of fugitive emissions.

B. Air Quality Data and Air Quality Monitoring

The SIP must contain air quality data collected since January 1, 1978. The SIP must also provide for the establishment of an air quality monitoring network for lead that contains at least two properly sited permanent monitors in each urbanized area; at least one must be at a roadway-type site and at least one at a neighborhood site. The required New Jersey lead monitors have been operational since before January 1, 1983 and have been found to be properly sited. In addition, special purpose high volume air samplers have been installed to monitor emission from the Delco-Remy and National Smelting of New Jersey plants discussed in the next section of this notice.

EPA proposes to find that the draft New Jersey SIP meets these data and monitoring requirements.

C. Demonstration of Attainment

The SIP must contain a demonstration that the lead standard will be attained and maintained. Specifically, the following types of areas which are subject to maximum air quality impact must be analyzed:

- Area in the vicinity of significant point sources, and
- Any other area that, since January 1, 1978, has measured ambient concentrations of lead in excess of the standards.

The following five significant point sources are identified in the draft New Jersey SIP as requiring air quality impact analysis:

(1) Delco-Remy, Division of General Motors Corporation, New Brunswick (lead-acid storage battery manufacture and secondary lead smelter).

(2) National Smelting of New Jersey Inc. (formerly National Lead Industries), Pedricktown (lead smelter).

(3) U.S. Metals Refining Company (AMAX), Carteret (copper refinery).

(4) Asarco Incorporated, Newark (secondary lead smelter).

(5) E. I. duPont, de Nemours and Company, Inc., Deepwater (Du Pont) (Lead gasoline additive plant).

Based on air quality dispersion modeling done by the State, the SIP indicates that there are no violations of the lead standards in the vicinity of the Asarco and Du Pont plants. EPA finds that the Du Pont demonstration of attainment is inconclusive. The State should submit additional data on background lead concentrations used in the demonstration for the Du Pont plant. Modeling of the U.S. Metals Refining Company plant in Carteret without including the effect of fugitive emission controls shows a violation of the standards. However, since an administrative consent order applicable to this plant requires fugitive emission controls and this order has been made a part of the SIP, modeling of this plant was also performed with the required fugitive controls in place. The results of this modeling show that no violations of the standards will occur.

The SIP's demonstration of attainment for the Delco-Remy plant also is inconclusive in that the emission rates that were used in modeling this plant were not verified by stack testing. The demonstration of attainment for the National Smelting of New Jersey plant is incomplete and inconclusive since the State indicates that it has not yet completed its development of necessary control measures. An air quality monitor in Pedricktown, New Jersey, which is in the vicinity of the National Smelting plant, has shown exceedances of the lead standards.

The SIP identifies that mobile sources were the probable cause of monitoring exceedances that have been measured in Trenton, Newark and Jersey City. However, a demonstration of attainment and maintenance for these areas is not presented in the draft SIP.

EPA finds that the SIP's demonstration of attainment and maintenance is approvable provided that the State submits acceptable demonstrations of attainment for the Delco-Remy plant and National Smelting of New Jersey plant, and for the three areas which have experienced monitoring exceedances.

D. Control Measures

- A lead SIP must include the following:

- A description of each control measure that is incorporated into the SIP.

- Copies of or citations to the enforceable laws and regulations necessary to implement the measures.

- A description of administrative procedures to be used in implementing each control procedure.

- A description of enforcement methods.

The administrative consent order which was agreed to by the State and the U.S. Metals Refining Company contains a schedule of milestone dates through August 1984 by which the Carteret plant will come into compliance with the requirements of the New Jersey Administrative Code, Title 7, Chapter 27, Subchapter 5, "Prohibition of Air Pollution" (NJAC 7:27-5). This consent order provides for fugitive emission controls at the plant and is made a part of the draft New Jersey SIP.

Since information is not yet available with regard to the control measures that the State will require at the Delco-Remy plant and the National Smelting of New Jersey plant, the draft SIP does not contain this information. In addition, the draft SIP does not contain information with regard to the analysis of the effectiveness of control measures in the vicinity of the measured air quality monitoring exceedance at Pedricktown.

The State regulations do not provide adequately for the review of existing sources or for the review of new or modified sources with the potential to emit more than five tons per year, as required under 40 CFR 51.18 and EPA policy. Therefore, in order for this issue to be resolved and the SIP to be finally approved by EPA, the State must submit prior to May 1, 1984 the following adopted regulatory changes or other changes to the same effect:

- In NJAC 7:27-18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas," the State must:

- Define a "major facility" for lead as any stationary source of lead pollutant which emits, or has the potential to emit, five tons per year or more of lead or lead compounds measured as lead.
- Define a "significant net increase" in lead emissions as a rate increase of 0.6 tons per year of either actual emissions or in the capability to increase emissions.
- Require that fugitive lead emissions, to the extent quantifiable, be entered into the calculation of total emissions from major facilities.

When making changes to Subchapter 18 the State should recognize that "banking" and offset provisions of new source review in non-attaining areas are not directly applicable to lead emissions.

• In NJAC 7:27-8, "Permits and Certificates," the State must:

—Require that all lead point sources greater than five tons per year or significant increases in emissions at major facilities of 0.6 tons per year, be analyzed to determine whether a violation of the standards for lead will occur. In this analysis fugitive emissions, area source, background, and stack emissions must be considered. If the final analysis, conducted using EPA approved dispersion modeling techniques, indicates that violation of the standards will occur, then a permit cannot be issued.

• In NJAC 7:27-13, "Ambient Air Quality Standards," the State must add reference to the national ambient air quality standard for lead (40 CFR 50.12).

It is EPA's understanding that the particulate matter regulations which are currently contained in the SIP will also be used by New Jersey for the control of lead emissions.

E. EPA's Proposed Action

Based on its review, EPA has determined that, with the exception of its provision for new source review procedures to meet the requirements of 40 CFR 51.18 for lead sources and additional information regarding demonstrations of attainment, emission inventory and control measures, the draft New Jersey lead SIP meets the requirements of Section 110(a) of the Clean Air Act and 40 CFR Part 51, Subparts B and E.

Therefore, EPA proposes to approve the SIP provided that the State provides to EPA by May 1, 1984 adequate information and documentation concerning:

• A demonstration of attainment and maintenance of the lead standards at locations of monitoring exceedances in Trenton, Newark and Jersey City.

• A demonstration of attainment and maintenance of the lead standards in the vicinity of National Smelting of New Jersey in Pedricktown and Delco-Remy Corporation in New Brunswick. The demonstration for National Smelting of New Jersey should also address attainment of the standards at the location of monitored exceedances in Pedricktown.

• Requirements for the review of new sources as needed to satisfy the provisions of 40 CFR 51.18 for new or

modified sources with the potential to emit more than five tons of lead per year.

• The specific procedures that the State used in the development of its emission inventory to identify fugitive emissions from sources.

• The rationale and procedures that the State applied in selecting a background lead concentration for the Du Pont attainment demonstration.

Final approval action will not be taken by EPA until this is accomplished and a subsequent disapproval action may be taken if it is not. Under the Natural Resources Defense Council (NRDC) Settlement Agreement and Consent Decree discussed in the *Federal Register* on August 10, 1983 (48 FR 36250), EPA must take final rulemaking action by August 1, 1984.

The issues that are identified in today's notice are clearly understood by the State and the action that EPA expects the State to take before the State submits its final SIP is well defined. The State has indicated that it intends to provide the additional information and documentation before EPA must take final rulemaking action. EPA's final action on the New Jersey SIP is dependent on its analysis of the comments EPA receives during the public comment period established by today's notice and on the State's response and actions with regard to the resolution of issues that are identified herein. Upon review of the requested information, EPA may have to require the State to conduct source-specific ambient monitoring to verify the demonstration of attainment and the effect of control measures. If the State or EPA receives no comments which would necessitate significant changes to the SIP or to the issues identified for resolution, then the State will proceed to resolve the issues by means of the actions identified in today's notice. If significant changes must be made to the draft SIP due to comments made during the public comment periods established by EPA and the State, EPA will have to repropose action on this SIP. EPA is employing the process of "parallel processing" with regard to this proposed approval of the draft New Jersey SIP for lead. The SIP processing procedure of "parallel processing" is discussed in a June 23, 1982 *Federal Register* notice (47 FR 27073).

Interested persons are invited to comment on any element of the subject revision and on whether or not the proposed New Jersey SIP revision meets Clean Air requirements. Comments received on or before February 27, 1984, will be considered in EPA's final decision. All comments received will be

available for inspection at the Region II office of EPA at 26 Federal Plaza, Room 1005, New York, New York 10278.

The Administrator's final decision to approve or disapprove the New Jersey lead SIP will be based on comments received and on a determination whether the SIP meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Subparts B and E.

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).

This notice of proposed rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a).

(Secs. 110 and 301, Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Lists of Subjects in 40 CFR Part 52

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

Dated: December 5, 1983.

Jacqueline E. Schafer,
Regional Administrator, Environmental
Protection Agency.

(FR Doc. 83-34457 Filed 12-28-83; 8:45 am)

BILLING CODE 8560-50-M

40 CFR Part 52

[A-6-FRL 2498-3]

Approval and Promulgation of Implementation Plans; New Mexico Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of New Mexico submitted its State Implementation Plan (SIP) for lead which demonstrated attainment throughout the State except for the Anapra area, which is across the State border from El Paso, Texas. Attainment in the Anapra, N.M. area was dependent on the Texas' lead control plan for the El Paso County area. Texas had submitted a draft lead control plan for the El Paso

area which will provide for attainment and maintenance of the lead NAAQS in Anapra, N.M. This action proposes to fully approve the New Mexico lead SIP. The rest of the New Mexico lead SIP was previously approved by EPA (except for the Anapra area in a **Federal Register** notice published on May 5, 1982 (47 FR 19333).

DATES: Interested persons are invited to submit comments on this proposed action on or before February 27, 1984.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Implementation Plan Section, EPA (6AW-AS), 1201 Elm Street, Dallas, Texas 75270. Copies of the SIP and EPA's Evaluation Report are available for public review during normal business hours at the following locations:

Air Quality Bureau, State of New Mexico, Environmental Improvement Division, P.O. Box 968, Santa Fe, New Mexico 87503.

EPA, Region 6, Library, 28th floor, Interfirst Two Bldg., 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, State Implementation Plan Section, Air Branch, EPA, Region 6, at (214) 767-9859 or FTS 729-9859.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$) averaged over a calendar quarter. As required by Section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which provide attainment and maintenance of the lead NAAQS.

The general requirements for a SIP are outlined in Section 110 of the Clean Air Act and EPA regulations 40 CFR 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the NAAQS, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for ensuring maintenance of the NAAQS. In reference to the needs of the Anapra, N.M. area, EPA has evaluated to Texas lead SIP for El Paso County by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned regulations.

On May 19, 1980, the Governor of New Mexico submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead.

On May 5, 1982 (47 FR 19333), EPA approved the general New Mexico lead SIP except for the part of the SIP concerning the Anapra area. As explained in the notice and in EPA's March 1982 Evaluation Report, attainment of the lead NAAQS in Anapra was dependent on development by the Texas Air Control Board (TACB) of a lead control plan for the El Paso area, specifically for the area in El Paso around a primary lead, copper, and zinc smelter which is near the Anapra area of New Mexico. The State of Texas has submitted a draft final lead control plan for the El Paso area in a letter dated September 8, 1983. Appropriate parts of the Texas draft final lead control plan for El Paso which affect the Anapra area are described below, along with EPA's proposed action on the Anapra area of the New Mexico lead SIP. A separate rulemaking will announce EPA's action on the El Paso part of the Texas lead SIP.

II. Description of the Lead Control Plan for the El Paso-Anapra Area

In the September 8, 1983 letter to the Regional Office, Texas submitted to EPA a draft final control plan for the ASARCO primary lead smelter in El Paso County. The draft plan also included proposed Texas Air Control Board (TACB) regulations for El Paso County applicable to lead smelters, including the ASARCO facility. The ASARCO draft lead control plan, and the El Paso County draft lead smelter regulations are discussed in detail in EPA's "Evaluation Report for the Texas Lead SIP for the El Paso Area," dated November 1983, which is available for review at the addresses listed in the **ADDRESSES** section of this notice. This section will discuss in general the State's draft lead control plan for the ASARCO facility and the impact of the control measures on the Anapra area. A detailed discussion of the Texas lead control plan for El Paso is provided in EPA's "Evaluation Report for the Texas Lead SIP for the EL Paso Area," dated November 1983, available at the addresses listed in the **ADDRESSES** section of this notice.

A. Control Plan for ASARCO in El Paso

In a letter dated September 8, 1983, Texas submitted a draft lead SIP revision for the ASARCO facility in EL Paso. The draft SIP revision was an addition to the Texas lead SIP and superseded the previously submitted modeling analyses and demonstration of

attainment which TACB had submitted to EPA. The submittal included:

- (1) A demonstration of attainment for the area around the ASARCO smelter.
- (2) Lead monitoring data for eighteen monitors operated throughout El Paso for the years 1980-1982.
- (3) A lead emission inventory for 1982 for the ASARCO facility.
- (4) A lead emission inventory for maximum operations for the facility.
- (5) Estimates of mobile source emission of lead for the El Paso area.
- (6) A description of additional control measures and emission limitations required for the ASARCO facility.
- (7) A lead emission inventory for maximum operations with additional control measures applied for the facility.
- (8) A summary of the predicted maximum ambient air quarterly lead concentrations around ASARCO after additional controls are implemented, as predicted by modeling.
- (9) A map of the El Paso area.
- (10) Modified rollback calculations for the monitoring sites in El Paso which have exceeded the lead NAAQS, and
- (11) Proposed regulations for nonferrous smelters in El Paso County.

The draft SIP revision and control plan for ASARCO has been reviewed by the TACB Regulations Committee, and a public hearing was held in El Paso concerning the control plan on October 11 and 12, 1983. A State of New Mexico representative was at the public hearing in El Paso and presented comments that New Mexico's opinion was that the El Paso control plan is technically sound and provides for attainment of the lead NAAQS throughout the El Paso-Anapra area if all proposed control measures for the ASARCO smelter are implemented. New Mexico did request that additional modeling be done for the Anapra area to fully demonstrate attainment in that area; Texas has done the additional modeling and submitted the information to the Regional Office. In a related **Federal Register** notice EPA is parallel-processing the El Paso lead control plan to allow EPA's proposed action on the draft control plan to be published by January 3, 1984 (as required by the U.S. District Court for the District of Columbia's Order of July 26, 1983,¹ concerning EPA's action on the approval/disapproval and promulgation of lead SIPs). EPA has not received a final control plan submittal by the Governor of Texas, but a final submittal with the Governor's signature is anticipated in early 1984. The Texas

¹ *Natural Resources Defense Council, Inc. (NRDC), et al., vs. William D. Ruckelshaus, et al.*, No. 82-2137.

draft smelter regulations for El Paso County are anticipated to be finalized and submitted to EPA in early 1984 also. Once finalized, the Texas regulations will require that control measures and lead emission limitations be implemented at the ASARCO facility by December 31, 1984.

The TACB draft lead control plan for ASARCO and the smelter regulations for El Paso County provide for the implementation of reasonably available control technology at the smelter to control lead emissions from both point sources and fugitive sources at ASARCO. In general, the control measures can be described as: (1) Requiring specific lead emission rate limitations for the 9 stacks at the ASARCO facility; (2) requiring building enclosure of the copper converter building and installation of secondary hoods for the copper converter operations with the routing of emissions to baghouses; (3) use of enclosed containers for transport of lead materials; (4) installation of additional hoods over the lead dross kettles, improvement in existing hoods on lead dross reverberatory furnaces; (5) installation of automatic air control systems on all lead blast furnaces; (6) requiring paving or covering with vegetation of portions of ASARCO property; and (7) automatic water sprinkling on vehicular traffic ways and on outside raw material storage areas. Texas has demonstrated that the required control measures and lead emission limitations are adequate to demonstrate attainment in most parts of El Paso, including the areas along the El Paso-Anapra border. With full implementation of the control measures and lead emission limitations, the lead NAAQS will continue to be maintained in Anapra even if the ASARCO, El Paso facility operates under maximum production conditions. Specific details of the lead control measures and emission limitations are provided in EPA's Evaluation Report of the Texas lead control plan for the El Paso area.

In addition to the modeling of the ASARCO facility which TACB submitted, EPA requested additional modeling of the ASARCO facility using the Industrial Source Complex—Long Term (ISC-LT) model. Texas was able to run the additional modeling with revised meteorological data, and the model predicted attainment of the lead NAAQS in the areas west or northwest of the ASARCO facility (toward New Mexico) during maximum production operations after all control measures are implemented at the smelter (as required by the proposed Texas smelter

regulations for El Paso County). Details of the TACB modeling are provided in EPA's Evaluation Report of the Texas lead control plan for the El Paso area. The modeling also predicted attainment of the New Mexico side of the border at a lead monitoring site in Anapra which had registered violations of the lead NAAQS up through 1981. To fully validate that the lead NAAQS will be attained and maintained as predicted by the State's modeling, New Mexico plans to continue operating the two lead monitors located in Anapra (which have not exceeded the lead NAAQS in 1982 or 1983), and TACB has agreed to continue the currently operating lead monitoring network around the ASARCO, El Paso facility.

The lead control measures for ASARCO are required by the Texas proposed El Paso County Regulations, revisions to § 113, applicable to nonferrous smelters in El Paso County. The proposed regulations are scheduled to be adopted as final by Texas before EPA's final rulemaking on the Anapra area of New Mexico. The TACB regulations will require full implementation of the lead controls by December 31, 1984. Submittal by Texas of the final El Paso control plan and final smelter regulations for El Paso County is expected in early 1984.

EPA's Action

EPA has evaluated the El Paso part of the Texas lead SIP and has determined that it demonstrates attainment of the lead NAAQS in Anapra, N.M. EPA believes that the El Paso part of the Texas lead SIP is adequate to attain and maintain the lead NAAQS's throughout Anapra, N.M. with the implementation of the control measures at the ASARCO facility required by the El Paso County smelter regulations applicable to the ASARCO, El Paso facility. EPA is proposing approval of the Anapra part of the New Mexico lead SIP since Texas has submitted to EPA a draft lead control plan and regulations for El Paso County, and Texas has agreed to submit a final control plan for the ASARCO facility, and final smelter regulations for El Paso County, before EPA's final rulemaking on the Anapra area. Specifically EPA is proposing to approve as part of the Texas Lead SIP the following proposed TACB Regulations (as published in the September 9, 1983, edition of the *Texas Register*) for lead smelters in El Paso County:

- Section 113.41 Maintenance and Operation of Control Equipment
- Section 113.42 Areas Accessible to the General Public
- Section 113.43 Control of Fugitive Dust

- Section 113.51 Materials Handling and Transfer
- Section 113.52 Smelting of Lead
- Section 113.53 Smelting of Copper and Zinc
- Section 113.71 Lead Emission Limits for Stacks
- Section 113.72 Stack Height Requirements
- Section 113.121 Compliance with Other Rules
- Section 113.122 Dates for Control Plan Submission and for Final Compliance
- Section 113.123 Control Plan Procedure
- Section 113.124 Reporting Procedure

Upon receipt from Texas of an approvable final lead control plan and smelter regulations for El Paso County, EPA will proceed with the development of a final rulemaking for the New Mexico lead SIP for the Anapra area.

The Regional Administrator hereby issues this notice setting forth EPA's approval of the Anapra part of the New Mexico lead SIP as a proposed rulemaking, and advises the public that interested persons may participate by submitting written comments to the Region 6 office. Comments received on or before the date listed in the **DATES** section will be considered. Comments received will be available for public inspection at the EPA Region 6 Office and at the locations listed in the **ADDRESSES** section of this notice.

The Administrator's final decision to approve or disapprove the Anapra part of the New Mexico lead SIP will be based on the comments received, on the submittal by Texas of an approvable final control plan for the ASARCO, El Paso facility, on the submittal of final regulations by Texas for lead smelters in El Paso County, and on a determination whether the SIP meets the requirements of section 110(a) of the Clean Air Act and 40 CFR Part 51, Subpart B and E.

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. (Sec. 46 FR 8709).

List of Subjects in 40 CFR Part 52

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

(Secs. 110 and 301, Clean Air Act, 42 U.S.C. 7410 and 7601)

Dated: November 30, 1983.

Dick Whittington,
Regional Administrator.

[FR Doc. 83-34465 Filed 12-26-83; 6:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-6-FRL 2498-1]

Approval and Promulgation of Implementation Plans; Texas Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Texas has submitted revisions to its State Implementation Plan (SIP) for lead for the El Paso area of the State. This action proposes approval of the part of the lead SIP which provides for implementation of reasonable available control technology (RACT) and additional studies in the El Paso County area of the State. The rest of the Texas lead SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a Federal Register notice published on October 4, 1983 (48 FR 45246). The Dallas area lead SIP will be addressed in a separate rulemaking.

DATES: Interested persons are invited to submit comments on this proposed action on or before February 27, 1984.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Implementation Plan Section, EPA (6AW-AS), 1201 Elm Street, Dallas, Texas 75270. Copies of the SIP and EPA's Evaluation Report are available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723. EPA, Region 6, Library, 28th floor, Interfirst Two Bldg., 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, State Implementation Plan Section, Air Branch, EPA, Region 6, at (214) 767-9859 or FTS 729-9859.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$) averaged over a calendar quarter. As required by section

110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide attainment and maintenance of the lead NAAQS.

The general requirements for a SIP are outlined in section 110 of the Clean Air Act and EPA regulations 40 CFR 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the NAAQS, a demonstration that the NAAQS will be attained within the time frame specified by the CAA, and provisions for ensuring maintenance of the NAAQS. EPA has evaluated the Texas lead SIP for El Paso County by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned regulations.

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead. Additional information concerning the lead SIP was submitted to EPA in letters dated January 29, 1982, March 15, 1982, June 3, 1982, June 15, 1982, August 23, 1982, October 14, 1982, and December 3, 1982. On October 4, 1983 (48 FR 45246), EPA approved the general Texas lead SIP except for the part of the SIP concerning the Dallas and El Paso areas. As explained in that notice and in EPA's September 1982 Evaluation Report, a control plan for the El Paso area, specifically for the area in El Paso around a primary lead, copper, and zinc smelter, was requested from the State before EPA could take action on the El Paso part of the Texas lead SIP. The State has submitted a draft final lead control plan for the El Paso area, submitted in a letter dated September 8, 1983. The draft final lead control plan is described below, along with EPA's proposed action on the El Paso County part of the Texas lead SIP.

II. Description of the Lead Control Plan for El Paso County

In the State's September 8, 1983 letter to the Regional Office, Texas submitted to EPA a draft final control plan for the ASARCO primary lead smelter in El Paso County. The draft plan also included proposed Texas Air Control Board (TACB) regulations for El Paso County applicable to lead smelters, including the ASARCO facility. The ASARCO draft lead control plan, and the El Paso County draft lead smelter regulations are discussed in detail in EPA's "Evaluation Report for the Texas Lead SIP for the El Paso Area," dated November 1983, which is available for

review at the addresses listed in the ADDRESSES section of this notice. This section will discuss in general the State's draft lead control plan for the ASARCO facility and the El Paso area, and will outline EPA's proposed action concerning El Paso County part of the Texas lead SIP.

A. Control Plan for ASARCO in El Paso

In a letter dated September 8, 1983, Texas submitted a draft lead SIP revision for the ASARCO facility in El Paso. The draft SIP revision was an addition to the Texas lead SIP and superseded the previously submitted modeling analyses and demonstration of attainment which TACB had submitted to EPA for El Paso. The submittal includes:

- (1) A demonstration of attainment for the area around the ASARCO smelter.
- (2) Lead monitoring data for eighteen monitors operated throughout El Paso for the years 1980-1982.
- (3) A lead emission inventory for 1982 for the ASARCO facility.
- (4) A lead emission inventory for maximum operations for the facility.
- (5) Estimates of mobile source emissions of lead for the El Paso area.
- (6) A description of additional control measures and emission limitations required for the ASARCO facility.
- (7) A lead emission inventory for maximum operations with additional control measures applied for the facility.
- (8) A summary of the predicted maximum ambient air quarterly lead concentrations around ASARCO after additional controls are implemented, as predicted by modeling.
- (9) A map of the El Paso area.
- (10) Modified rollback calculations for the monitoring sites in El Paso which have exceeded the lead NAAQS, and
- (11) Proposed regulations for nonferrous smelters in El Paso County.

The draft SIP revision and control plan for ASARCO have been reviewed by the TACB Regulations Committee, and a public hearing was held in El Paso concerning the control plan on October 11 and 12, 1983. EPA is parallel processing the El Paso lead control plan to allow EPA's proposed action on the draft control plan to be published by January 3, 1984 (as required by the U.S. District Court for the District of Columbia's Order of July 26, 1983¹ concerning EPA's action on the approval/disapproval and promulgation of lead SIPs. EPA has not received a final control plan submittal by the

¹Natural Resources Defense Council, Inc. (NRDC), et al., vs. William D. Ruckelshaus, et al., No. 82-2137.

Governor of Texas, but a final submittal with the Governor's signature is anticipated in early 1984. The draft smelter regulations for El Paso County are anticipated to be finalized and submitted to EPA in early 1984 also. Once finalized, the smelter regulations will require that control measures and lead emission limitations be implemented at the ASARCO facility by December 31, 1984.

In addition to the modeling of the ASARCO facility using the Valley model which TACB submitted, EPA requested additional modeling of the ASARCO facility using the Industrial Source Complex-Long Term (ISC-LT) model and requested that both models be run with corrected meteorological data. Texas was able to run both ISC-LT for flat terrain close to the smelter, and Valley for complex terrain further away from the smelter, with revised meteorological data. The ISC modeling predicted attainment, but the revised Valley modeling predicted values slightly above the lead NAAQS for an area in complex terrain east of the ASARCO facility. The modeling was for maximum production at the smelter, after all the proposed control measures are implemented at the smelter, which are required by the proposed smelter regulation for El Paso County. Details of the TACB modeling are provided in EPA's Evaluation Report. TACB is currently reviewing the additional modeling to confirm that the modeling was done correctly, and to confirm that predictions of attainment are not possible with the currently proposed lead control measures for the ASARCO smelter. The State is also reviewing the lead control plan for the ASARCO facility to confirm that all lead emission points at the smelter complex have been, or are proposing to be, controlled by reasonable available control technology. To validate if the lead NAAQS is actually attained and maintained in the coming years after the implementation of all control measures, TACB has agreed to continue the currently operating lead monitoring network around the El Paso facility.

The TACB draft lead control plan for ASARCO and the smelter regulations for El Paso County provide for the implementation of reasonably available control technology (RACT) plus other control measures that Texas believes are feasible at the smelter to control lead emissions from both point sources and fugitive sources at ASARCO. In general, the control measures can be described as: (1) requiring specific lead emission rate limitations for the 9 stacks at the ASARCO facility; (2) requiring

building enclosure of the copper converter building and installation of secondary hoods for the copper converter operations with the routing of emissions to baghouses; (3) use of enclosed containers for transport of lead materials; (4) installation of additional hoods over the lead dross kettles; (5) improvement in existing hoods on lead dross reverberatory furnaces; (6) installation of automatic air control systems on all lead blast furnaces; (7) requiring paving or covering with vegetation of portions of ASARCO property; and (8) requiring automatic water sprinkling on vehicular traffic ways and on outside raw material storage areas. The lead control measures which Texas has proposed for the ASARCO facility will provide for up to a 90% reduction in lead concentrations at the monitoring sites near the smelter facility. The lead emission reductions which TACB has proposed will provide for attainment and maintenance of the lead NAAQS throughout El Paso except for an area in complex terrain east of the smelter, as predicted by Texas' modeling analyses. Texas is in the process of reviewing if any individual lead emission reductions can be obtained by the application of additional control measures. EPA will work with the State in an effort to develop additional lead control measures for the ASARCO facility which will provide for full attainment of the lead NAAQS in all areas around the smelter. It is the intent of EPA that all necessary lead control measures will be implemented before the final attainment date of three years from EPA approval of the Texas lead SIP for El Paso. Specific details of the currently proposed lead control measures and emission limitations proposed by Texas are provided in EPA's Evaluation Report. The proposed control measures for the ASARCO facility are required by the proposed El Paso County Regulations, revisions to § 113, applicable to nonferrous smelters in El Paso County. The proposed regulations are scheduled to be adopted as final before EPA's final rulemaking on the El Paso lead control plan. The TACB regulations will require full implementation of the controls by December 31, 1984. Submittal of the final El Paso control plan and final smelter regulations for El Paso County is expected in early 1984.

B. SIP for the Remainder of El Paso County

The State has submitted all available monitoring information for El Paso County which has shown that the lead NAAQS has been exceeded throughout

the County numerous times during 1980-1982. TACB has validated that no other lead point sources are operating in El Paso County except for the ASARCO lead smelter and mobile sources. TACB has demonstrated that the anticipated reductions in lead emissions at ASARCO, along with reductions due to EPA's lead phasedown-in-gas program will provide for attainment and maintenance of the lead NAAQS at each of the current monitoring sites throughout El Paso County after December 1984. Any new industrial sources of lead seeking to locate in El Paso County will be required to undergo TACB new source review, which requires that new sources must demonstrate that the NAAQS's will be maintained if the source is allowed to operate in an area. Implementation of the requirements of the general Texas lead SIP along with implementation of the lead control plan for the ASARCO facility will ensure that the lead NAAQS, once it is attained, will continue to be maintained throughout El Paso County.

In addition to the past monitoring information for El Paso County which the State has submitted to EPA, the TACB has agreed with EPA to operate a number of lead monitoring sites throughout El Paso County. In a letter dated November 9, 1983, EPA approved TACB's State and Local Air Monitoring Stations (SLAMS) in El Paso for lead. EPA has previously approved the National Air Monitoring Stations (NAMS) in El Paso for lead. There are two lead NAMS sites and 9 lead SLAMS sites located in El Paso County. The NAMS sites include a neighborhood scale, high population exposure site, and a microscale, maximum concentration site. The former is in a northern suburban area of El Paso. The latter is sited adjacent to a major expressway in the downtown area. The SLAMS sites are located: downtown as a neighborhood scale, maximum concentration site; east of downtown as a middle scale, high population exposure site near a major street; north of downtown as a neighborhood scale, high population exposure sites; northwest of downtown as a neighborhood scale, high population exposure site; east of downtown as a neighborhood scale, high population site; southeast of downtown as a middle-scale high population exposure site; east of the ASARCO smelter (which is west of downtown) as a middle-scale, high population exposure site; and southeast of the smelter as a middle-scale, high population exposure site. A ninth SLAMS site, identified as the Rio

Grande site near the smelter, has not been agreed to and located yet. When located, it will be in close vicinity to the smelter and represent a maximum concentration, high population exposure site. Currently the IBWC monitor operated by the El Paso City-County Health Organization serves as a maximum concentration, high population exposure site. In addition to the lead SLAMS and NAMS monitors, TACB has added four more special purpose lead monitors near the ASARCO smelter. One monitor is northwest of the facility, one is northeast, one is east, and the fourth monitor is southeast of the facility. All four monitors are within approximately 1½ miles of the ASARCO complex. The Texas SLAMS, NAMS, and special purpose monitoring sites for lead in El Paso County are adequate to fully monitor the attainment and maintenance of the lead NAAQS throughout the County.

In a recent decision, the United States Court of Appeals for the District of Columbia remanded portions of EPA's stack height regulations to the Agency for promulgation of new regulations governing credit to be given for stack height increases in certain situations. *Sierra Club et al. v. EPA et al.*, Nos. 82-1384, 82-1412, 82-1845 and 82-1889 (D.C. Cir. Oct. 11, 1983). TACB is proposing to require ASARCO to raise some of the baghouse stacks and lead stacks at the facility in addition to requiring lead emission limitations for those stacks. But, ASARCO is not raising any of its stacks above the "de minimus" stack height listed in EPA's regulations, 40 CFR 51.1(ii) (1982). The Court of Appeals did not address the "de minimus" height, nor did any of the petitioners take issue with it, does not affect this proposed action on the El Paso lead control plan.

EPA's Action

EPA has evaluated the El Paso part of the Texas lead SIP and has determined that it meets most of the requirements of Section 110(a) of the Clean Air Act and 40 CFR Part 51, Subparts B and E. The State submittal provides for the implementation of RACT control measures and additional control measures at the ASARCO smelter, provides for attainment at each of the monitors located in El Paso, and includes modeling analyses which demonstrate attainment in all areas of El Paso except for an area near the smelter facility. Therefore the State control plan must be revised to require

enough lead control measures so that a full demonstration of attainment can be made by means of modeling analyses. EPA is proposing approval of the El Paso part of the State's lead SIP, since the State has submitted to EPA a draft lead control plan and regulations which require at the minimum that RACT measures for lead pollution control will be implemented at the ASARCO facility, has agreed to submit a final lead control plan for the ASARCO facility, has agreed to submit final smelter regulations for El Paso County to EPA before EPA's final rulemaking, and has committed to continue operating the lead monitoring network in El Paso. In addition, prior to EPA's final action, the State will need to submit as part of the SIP a schedule for study, adoption, and implementation of additional lead control measures for the El Paso area and a demonstration of attainment that the additional control measures will provide for attainment of the lead NAAQS in all areas of El Paso by the attainment date of 3 years from EPA's final rulemaking.

Specifically EPA is proposing to approve as part of the Texas Lead SIP the following proposed TACB Regulations (as published in the September 9, 1983, edition of the *Texas Register*) for lead smelters in El Paso County:

- Section 113.41 Maintenance and Operation of Control Equipment
- Section 113.42 Areas Accessible to the General Public
- Section 113.43 Control of Fugitive Dust
- Section 113.51 Materials Handling and Transfer
- Section 113.52 Smelting of Lead
- Section 113.53 Smelting of Copper and Zinc
- Section 113.71 Lead Emission Limits for Stacks
- Section 113.72 Stack Height Requirements
- Section 113.421 Compliance with Other Rules
- Section 113.122 Dates for Control Plan Submission and for Final Compliance
- Section 113.123 Control Plan Procedure
- Section 113.124 Reporting Procedure

Upon receipt of an approvable final control plan and regulations for El Paso County, EPA will proceed with the development of a final rulemaking for the Texas lead SIP for El Paso County. Also there are certain provisions of the El Paso County proposed smelter regulations that require the submittal to TACB and approval by TACB of any source requested alternate lead control measures. All alternate lead control measures or exemptions approved by TACB must be submitted by Texas to EPA as a SIP revision, and must be

reviewed and approved by EPA, as required by the CAA, before the alternate control measures become part of the Texas lead SIP. EPA finds that the general Texas lead SIP that has been approved previously by EPA contains regulations that satisfy general requirements not specifically mentioned in the El Paso County lead SIP, and these general regulations can be incorporated into the El Paso County lead SIP.

The Regional Administrator hereby issues this notice setting forth EPA's approval of the El Paso part of the Texas lead SIP as a proposed rulemaking, and advises the public that interested persons may participate by submitting written comments to the Region VI office. Comments received on or before the date listed in the DATES section will be considered. Comments received will be available for public inspection at the EPA Region VI Office and at the locations listed in the ADDRESSES section of this notice.

The Administrator's final decision to approve or disapprove the El Paso part of the Texas lead SIP will be based on the comments received, on the submittal of an approvable final control plan for the ASARCO facility, on the submittal of final regulations for lead smelters in El Paso County, on the submittal of schedule for additional studies as discussed of section 110(a) of the Clean Air Act and 40 CFR Part 51, Subpart B and E.

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. (Sec. 46 FR 8709).

List of Subjects in 40 CFR Part 52

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

(Secs. 110 and 301, Clean Air Act, 42 U.S.C. 7410 and 7601)

Dated: November 30, 1983.

Dick Whittington,
Regional Administrator.

[FR Doc. 83-3463 Filed 12-28-83; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

(A-6-FRL 2498-1)

Approval and Promulgation of Implementation Plans; Texas Lead Plan**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Texas has submitted revisions to its State Implementation Plan (SIP) for lead for the Dallas area of the State. This action proposes approval of the part of the lead SIP which provides for attainment and maintenance of the lead NAAQS for the Dallas County area of the State. The rest of the Texas lead SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a Federal Register notice published on October 4, 1983 (48 FR 45246). The El Paso area lead SIP will be addressed in a separate rulemaking.

DATES: Interested persons are invited to submit comments on this proposed action on or before February 27, 1984.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Implementation Plan Section, EPA (6AW-AS), 1201 Elm Street, Dallas, Texas 75270. Copies of the SIP and EPA's Evaluation Report are available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723.

EPA, Region 6, Library, 28th floor, Interfirst Two Bldg., 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: J. Ken Greer, State Implementation Plan Section, Air Branch, EPA, Region 6, at (214) 767-9859 or FTS 729-9859.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g lead}/\text{m}^3$) averaged over a calendar quarter. As required by section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide attainment and maintenance of the lead NAAQS.

The general requirements for a SIP are outlined in Section 110 of the Clean Air Act and EPA regulations 40 CFR 51,

Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E. These provisions require the submission of air quality data, emission data, air quality modeling, control strategies for each area exceeding the NAAQS, a demonstration that the NAAQS will be attained within the timeframe specified by the CAA, and provisions for ensuring maintenance of the NAAQS. EPA has evaluated the Texas lead SIP for Dallas County by comparing it to the requirements for an approvable SIP, as set forth in the above mentioned regulations. [EPA's Evaluation Report, dated March 1983, is available for public review at addresses listed in **ADDRESSES** section of this notice.]

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead. Additional information concerning the lead SIP was submitted to EPA in letters dated January 29, 1982, March 15, 1982, June 3, 1982, June 15, 1982, August 23, 1982, October 14, 1982, and December 3, 1982.

On October 4, 1983 (48 FR 45246), EPA approved the general Texas lead SIP except for the part of the SIP concerning the Dallas and El Paso areas. As explained in the notice and in EPA's September 1982 Evaluation Report, a proposed control plan for the Dallas area, specifically for two areas in Dallas around two secondary lead smelters, was requested from the State before EPA could take action on the Dallas part of the Texas lead SIP. The State has submitted draft final lead control plans for the Dallas area, submitted in letters dated October 3, 1983, November 3, 1983, and November 4, 1983. The draft final lead control plans are described below, along with EPA's proposed action on the Dallas County part to the Texas lead SIP.

II. Description of the Lead Control Plan for Dallas County

In the State's October 3, November 3 and 4, 1983 letters to the Regional Office, Texas submitted to EPA draft final control plans for two secondary smelters in Dallas County, the Dixie Metals Company and RSR Corporation (Murph Metals) facilities. The draft plans include a final Agreed Court Order 83-5680 of the 95th District Court in Dallas County (between the City of Dallas and the State of Texas vs. RSR Corporation and Murph Metals, Inc.), applicable to the RSR facility in Dallas. The draft plans also include proposed Texas Air Control Board (TACB) regulations for Dallas County applicable to secondary lead smelters in Dallas, including the Dixie facility. The RSR and

Dixie draft lead control plans, the Agreed Court Order for RSR, and the Dallas County draft smelter regulations are discussed in detail in EPA's "Evaluation Report for the Texas Lead SIP for the Dallas Area," dated November 1983, which is available for review at the addresses listed in the **ADDRESSES** section of this notice. This section will discuss in general the State's draft lead control plans for RSR and Dixie and will outline EPA's proposed action concerning Dallas County part of the Texas lead SIP.

A. Control Plan for RSR Corporation

In letters dated October 3, and November 3, 1983, Texas submitted a draft lead SIP revision for the RSR Corp. facility in Dallas. The draft SIP revision was an addition to the Texas lead SIP and superseded the previously submitted modeling analyses and demonstration of attainment which TACB had submitted to EPA. The submittal included:

- (1) A demonstration of attainment for the area around the RSR smelter,
- (2) Lead monitoring data for three monitors operated around RSR for the 2nd, 3rd and 4th quarters of 1982,
- (3) A lead emission inventory for 1982 for the facility,
- (4) A lead emission inventory for maximum operations for the facility,
- (5) Estimates of mobile source emissions of lead for the area around RSR,
- (6) A description of additional control measures and emission limitations required for the facility,
- (7) A lead emission inventory for maximum operations with additional control measures applied for the facility,
- (8) A summary of the predicted maximum ambient air quarterly lead concentrations around RSR after additional controls are implemented, as predicted by modeling,
- (9) Maps of the plant layout and,
- (10) A copy of the Consent Order for RSR which was approved by the Dallas District Court on October 17, 1983.

The draft SIP revision and control plan for RSR was reviewed by the TACB Regulations Committee on October 14, 1983, and a public hearing was held in Dallas concerning the RSR control plan on November 30, 1983 (separate from the public comment period in mid-October which was allowed by the Dallas District Court for the RSR Court Order). EPA is parallel-processing the RSR lead control plan to allow EPA's proposed action on the draft control plan to be published by January 3, 1984 (as required by the court settlement

agreement of July 26, 1983¹ concerning EPA's action on the approval/disapproval and promulgation of lead SIP's for all the States in the U.S.A.), EPA has not received a final control plan submittal by the Governor of Texas, but a final submittal with the Governor's signature is anticipated in early 1984. The Dallas District Court Consent Order has been finalized and is effective; it requires control measures and emission limitations to be implemented at the RSR smelter facility throughout the upcoming months with full implementation of controls no later than June 1, 1984.

The RSR control plan submitted by Texas included a description of the dispersion modeling which TACB had done for the RSR facility, using the Texas Climatological Model (TCM), and using typical meteorological data for Dallas. The modeling results predicted lead concentrations around the facility at maximum production, for the years 1984, and 1985 and after. No violations of the lead NAAQS off of plant property were predicted. In addition to the TCM modeling of the RSR facility which TACB submitted, EPA did additional modeling analysis of the RSR facility using the Industrial Source Complex-Short Term (ISC-ST) model. Since the ISC-ST is a more sophisticated model, EPA was interested in determining if a different result would be obtained. In general, both the TCM and ISC-ST models tended to underpredict monitored values.

EPA acceptance of the Texas modeling demonstration for RSR is based on the following factors:

(1) EPA modeling was unable to do any better than the Texas model used in correlating predicted values with monitored data.

(2) The RSR control plan requires a significant reduction in fugitive emissions (approximately 84%, at maximum plant capacity), which are the primary cause of high ambient lead values near the plant.

(3) The RSR control plan requires controls at all major, and most minor, sources of lead emissions at the plant.

(4) The State will continue to operate the ambient monitoring network around the plant to fully validate that the lead NAAQS will be attained and maintained as predicted by the State's modeling.

Details of the TACB and EPA modeling are provided in EPA's Evaluation Report.

The TACB draft lead control plan for RSR and the Agreed Court Order provide for the implementation of control technology at the smelter to control lead emissions from both point sources and fugitive sources at RSR. In general, the control measures can be described as: (a) Requiring specific lead emission rate limitations for the 4 stacks at the RSR facility; (b) requiring building enclosure by the use of double wind curtains or solid doors; (c) requiring that negative pressure be maintained on the smelter and batch house buildings at all times and that the building ventilation be ducted to a baghouse; (d) requiring paving or covering with vegetation of most of the outside plant areas; (e) prohibiting the outdoor storage of lead bearing materials; (f) and requiring washing of truck transport tires, and wetting of work areas. Texas has demonstrated that the required control measures and emission limitations are adequate to demonstrate attainment around the RSR facility, and, with full implementation of the control measures and emission limitations required by the Agreed Court Order for RSR, the lead NAAQS will continue to be maintained even if the facility operates under maximum production conditions. Specific details of the lead control measures and emission limitations are provided in EPA's Evaluation Report.

B. Control Plan for Dixie Metals

In a letter dated November 4, 1983, Texas submitted a draft SIP revision for the Dixie Metals facility in Dallas. The draft SIP revision was an addition to the Texas lead SIP and superseded the previously submitted modeling analyses and demonstration of attainment which TACB had submitted to EPA. The November 1983 submittal included:

(1) A demonstration of attainment for the area around the Dixie smelter,

(2) Lead monitoring data for four monitors operated around Dixie for the 2nd, 3rd, and 4th quarters of 1982,

(3) A lead emission inventory for 1982 for the facility,

(4) A lead emission inventory for maximum operations for the facility,

(5) Estimates of mobile source emissions of lead for the area around Dixie,

(6) A description of additional control measures and emission limitations required for the facility,

(7) A lead emission inventory for maximum operations with additional control measures applied for the facility,

(8) A summary of the predicted maximum ambient air quarterly lead concentrations around Dixie after additional controls are implemented, as predicted by modeling,

(9) Maps of the plant layout, and
(10) A copy of draft Texas general regulations for secondary lead smelters located in Dallas County.

The Dixie draft control plan was reviewed by the TACB Regulations Committee on November 18, 1983, and a public hearing is scheduled in Dallas for January 10, 1984. EPA is parallel processing the Dixie lead control plan to allow EPA's proposed action on the draft control plan to be published by January 3, 1984 (as required by the *NRDC vs. EPA* court case referenced earlier). EPA has not received a final control plan submittal by the Governor of Texas, but a final submittal with the Governor's signature is anticipated in early 1984. The adoption by Texas of the draft smelter regulations for Dallas County are expected to be submitted to EPA in early 1984 also.

The Dixie control plan submitted by Texas included a description of the dispersion modeling which TACB had done for the Dixie facility, using the model TCM, and using typical meteorological data for Dallas. The modeling results predicted lead concentrations around the facility at maximum production, for 1985 and after. No violations of the lead NAAQS off of plant property were predicted. The TACB modeling for Dixie did provide a good correlation with monitoring data available around the Dixie facility. In addition to the TCM modeling of the Dixie facility which TACB submitted, EPA did additional modeling of the Dixie facility using the ISC-ST model. EPA modeling correlated with the results of the TACB-TCM modeling, with both of the models predicting attainment of the lead NAAQS around the Dixie facility at maximum production after all control measures are implemented at the smelter. Details of the TACB and EPA modeling are provided in EPA's Evaluation Report. To fully validate that the lead NAAQS will be attained and maintained as predicted by the State's modeling, TACB has agreed to continue the currently operating monitoring network around the Dixie facility.

The TACB draft lead control plan for Dixie and the proposed secondary lead smelter regulations for Dallas County provide for the implementation of reasonably available control technology at the smelter to control lead emissions from both point sources and fugitive sources at Dixie. In general, the control measures for Dixie are conceptually similar to the control measures for RSR, except that since the Dixie facility is smaller, and has less plant area and fewer buildings, the list of Dixie control

¹ Settlement Agreement, U.S. District Court for the District of Columbia, *Natural Resources Defense Council, Inc. (NRDC) vs. William D. Ruckelshaus, EPA*, dated July 26, 1983.

measures is not as lengthy as the RSR requirements, although similar emission reductions are being obtained. Also, specific to the Dixie facility, there are outside storage bins and an outside battery saw which will be required to be fully enclosed to prevent fugitive emissions. Texas has demonstrated that the draft required control measures and emission limitations are adequate to demonstrate attainment around the Dixie facility. The draft control measures are required by proposed Dallas County Regulations, revisions to § 113, applicable to lead smelters in Dallas County. The proposed regulations are scheduled to be adopted as final before EPA's final rulemaking on the Dallas lead control plan. The TACB regulations will require full implementation of the controls by June 30, 1985. With full implementation of the control measures and emission limitations at Dixie, the lead NAAQS will continue to be maintained even if the facility operates under maximum production conditions. Specific details of the lead control measures and emission limitations are provided in EPA's Evaluation Report.

C. SIP for the remainder of Dallas County

The State has submitted all available monitoring information for Dallas County which has shown that the lead NAAQS has not been exceeded throughout the County except in 1982 near the RSR facility. TACB has validated that no other lead point sources are operating in Dallas County except for the two secondary lead smelters for which draft control plans have been submitted (the State provided to EPA in a January 29, 1982 letter that a secondary smelter named ESB had permanently shut-down and was only being used as a warehouse). Therefore, EPA's lead phasedown-in-gas program will continue to keep the lead NAAQS from being violated throughout Dallas County due to mobile source emissions of lead. Since any new industrial sources of lead seeking to locate in Dallas County will be required to undergo TACB new source review, which requires that new sources must demonstrate that the NAAQS's will be maintained if the source is allowed to operate in an area, no specific lead control plan is required of TACB for the remainder of Dallas County. Implementation of the requirements of the general Texas lead SIP along with implementation of the lead control plans for the RSR and Dixie facilities will ensure that the lead NAAQS is maintained throughout Dallas County.

In addition to the past monitoring information for Dallas County which the State has submitted to EPA, the TACB has agreed with EPA to operate a number of lead monitoring sites throughout Dallas County. In a letter dated November 9, 1983, EPA approved TACB's State and Local Air Monitoring Stations (SLAMS) in Dallas for Lead. EPA had previously approved the National Air Monitoring Stations (NAMS) in Dallas for lead. There are two lead NAMS sites and 5 lead SLAMS sites located in Dallas County. The NAMS sites include a middle-scale, maximum concentration site, and a neighborhood scale, high population exposure site. The former site is located adjacent to a major 6-lane expressway. The latter is located in a heavily-traveled neighborhood street. Two of the SLAMS sites are sited to monitor the lead exposure in areas of high population, in neighborhood areas. Two other SLAMS sites are sited near one of the secondary lead smelters in Dallas. One site is classified as a middle-scale, maximum concentration site, and the other site is classified as a neighborhood scale, high population exposure site. One other SLAMS site is located near the other secondary lead smelter in Dallas and is classified as a middle-scale, maximum concentration site. The Texas SLAMS and NAMS sites for lead in Dallas County are adequate to fully monitor the attainment and maintenance of the lead NAAQS throughout the County of Dallas.

In a recent decision, the United States Court of Appeals for the District of Columbia remanded portions of EPA's stack height regulations to the Agency for promulgation of new regulations governing credit to be given for stack height increases in certain situations. *Sierra Club et al. v. EPA et al.*, Nos. 82-1384, 82-1412, 82-1845 and 82-1869 (D.C. Cir. Oct. 11, 1983). TACB is proposing to allow RSR to raise some of the baghouse stacks at the facility in addition to requiring lead emission limitations for those stacks. But, neither the RSR or the Dixie smelters are raising their stacks above the "de minimus" stack height listed in EPA's regulations, 40 CFR 51.1(ii) (1982). The Court of Appeals did not address the "de minimus" height, nor did any of the petitioners take issue with it. Therefore, the Court remand of part of EPA's stack height regulations does not affect this proposed action on the Dallas lead control plan.

EPA's Action

EPA has evaluated the Dallas part of the Texas lead SIP and has determined that it meets the requirements of section 110(a) of the Clean Air Act and 40 CFR

Part 51, Subparts B and E. EPA believes that the Dallas part of the SIP is adequate to attain and maintain the lead NAAQS's throughout Dallas, with the implementation of the Agrees Court, Court Order for RSR, and the Dallas County smelter regulations applicable to the Dixie facility. EPA is proposing approval of the Dallas part of the State's lead SIP, since the State has submitted to EPA draft control plans and regulations, and has agreed to submit final control plans for RSR and Dixie, and final smelter regulations for Dallas County, before EPA's final rulemaking. Specifically EPA is proposing to approve as part of the Texas Lead SIP the following proposed TACB regulations for lead smelters in Dallas County:

- Section 113.81 Maintenance and operations of control equipment.
- Section 113.83 Storage of lead containing materials.
- Section 113.85 Fugitive emissions from lead processes.
- Section 113.87 Battery or lead reclaiming operations.
- Section 113.88 Lead emission limits for reverberatory furnaces and blast furnaces.
- Section 113.121(b) Compliance with other rules.
- Section 113.122(b) Dates for control plan submission and for final compliance.
- Section 113.123(b) Control plan procedure, and
- Section 113.124(b) Reporting procedure.

Upon receipt of approvable final control plans and regulations for Dallas County, EPA will proceed with the development of a final rulemaking for the Texas lead SIP for Dallas County.

There are certain provisions of the Dallas County proposed smelter regulations, and the RSR Agreed Court Order, which require the submittal to TACB and approval by TACB of any source-requested alternate lead control measures. All alternative lead control measures approved by TACB must be submitted by Texas to EPA as a SIP revision, and be reviewed and approved by EPA, as required by the CAA, before the alternative control measures became part of the Texas lead SIP. If the Dallas County regulations are revised in the near future, EPA will review the changes and notify the public of any revisions. EPA finds that the general Texas lead SIP that has been approved previously by EPA contains regulations that satisfy general requirements not specifically mentioned in the Dallas County lead SIP, and these general regulations can be incorporated into the Dallas County lead SIP.

The Regional Office also requests public comments on a TACB action concerning the Dixie smelter in Dallas. TACB has requested public comment on

whether an alternate mechanism should be allowed from Dixie to provide for attainment of the lead NAAQS and for reasonable control with due consideration for differences in economy and scale. The alternative mechanism would require compliance at the Dixie smelter with the Dallas County smelter regulations contingent upon company not exceeding a certain production rate. The exemption level would allow for smelter operations at partial operation, but at level which would not cause an exceedance of the lead NAAQS. EPA would require that the limitation on production rate would be fully enforceable. EPA requests public comments on this alternate control mechanism as a viable option for TACB to attain and maintain the lead NAAQS around the Dixie smelter in Dallas.

The Regional Administrator hereby issues this notice setting forth EPA's approval of the Dallas part of the Texas lead SIP as a proposed rulemaking, and advises the public that interested persons may participate by submitting written comments to the Region VI office. Comments received on or before the date listed in the DATES section will be considered. Comments received will be available for public inspection at the EPA Region VI Office and at the locations listed in the ADDRESSES section of this notice.

The Administrator's final decision to approve or disapprove the Dallas part of the Texas lead SIP will be based on the comments received, on the submittal of approvable final control plans for the Dixie and RSR facilities, on the submittal of final regulations for smelters in Dallas County, and on a determination whether the SIP meets the requirements of section 110(a) of the Clean Air Act and 40 CFR Part 51, Subpart B and E.

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).

Lists of Subjects in 40 CFR Part 52

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

(Sec. 110(a) and 301(a), Clean Air Act, (42 U.S.C. 7410(a) and 7601(a)))

Dated: November 30, 1983.

Dick Whittington,
Regional Administrator.

[FR Doc. 83-34466 Filed 12-28-83; 8:45am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-4-FRL 2496-8]

Hazardous Waste Management Programs, Florida; Authorization for Interim Authorization Phase II, Components A and B

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Hazardous Waste Management Program.

SUMMARY: The State of Florida has applied for Interim Authorization, Phase II, Components A and B, which would allow the State, rather than the Environmental Protection Agency (EPA), to issue or deny permits regulating the operation of facilities that treat and store hazardous waste, excluding surface impoundments and waste piles. EPA has reviewed Florida's application and has determined that Florida's hazardous waste program is substantially equivalent to the federal program. Therefore, EPA is granting the State of Florida Interim Authorization for Phase II, Components A and B.

EFFECTIVE DATE: Interim Authorization Phase II, Components A and B, for Florida is effective on December 29, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980, *Federal Register* (45 FR 33063) the EPA promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in the State in lieu of a federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the federal program under RCRA. In order to expedite the authorization of State programs, RCRA

allows EPA to grant a State agency interim authorization if its program is substantially equivalent to the federal program. During interim authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the federal program. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying federal program takes effect.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the January 26, 1981, *Federal Register* (46 FR 7965), the EPA announced that States could apply for Components A and B of Phase II of Interim Authorization. Component A, analogous to federal regulations published in the *Federal Register* January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B, analogous to federal regulations published in the *Federal Register* January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

On July 26, 1982, the standards for permitting surface impoundments and waste piles were amended and moved from Component A to Component C of interim authorization (47 FR 32379). Florida will apply for interim authorization for such facilities when applying for Phase II, Component C.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 271, Subpart B, as amended at 48 FR 14257 (April 1, 1983).

The State of Florida received Interim Authorization for Phase I on May 19, 1982.

Draft Application

The State of Florida submitted its draft application for Phase II Interim Authorization, Components A & B, on January 18, 1982. After detailed review, EPA asked the State to submit the following in order to complete review of the draft application:

(1) A copy of a recent amendment to the State Statute that extended the permit review time;

(2) An up-dated Attorney General's Statement;

(3) A Phase II Legislative checklist for portions of the State program which were not adopted by reference;

(4) Florida's Administrative Code, Chapter 17-4, State permit procedures and requirements;

(5) Florida's Permit Form.

Florida submitted documents 1-4 listed above to EPA on August 20, 1982, as part of the Phase II A & B Final Application. The officially adopted permit form was submitted on November 12, 1982.

The major issues raised during EPA's review of the draft application concerned two provisions of § 120.60(2) of the Florida Statutes. This section provides that the State agency must request additional information from a permit applicant within thirty days of submission of the application, or lose the authority to deny the permit for failure to submit such information. It also provides that the application must be approved or denied within ninety days of submission of a complete application, and that if no decision is made within the specified time, the application "shall be deemed approved."

Final Application

On August 20, 1982, Florida submitted to EPA a final application for Interim Authorization, Phase II, Components A & B, under RCRA. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Florida's hazardous waste management program.

EPA comments were forwarded to the State on November 24, 1982, and February 25, 1983. The comments presented a more detailed request for further clarification on the issues described above.

By letters dated December 22, 1982, and March 8, 1983, the State responded to the issues raised by EPA through submittal of addenda to the Phase II A & B application and a revised Memorandum of Agreement (MOA).

Public Hearing and Comment Period

By notice published in the *Federal Register* on December 30, 1982 (47 FR 58307), EPA gave the public until February 2, 1983, to comment on the State's application. The notice also provided for a hearing to be held in Florida on February 2, 1983, if significant public interest was expressed. A public hearing was not held since neither the

State nor EPA received a request for a hearing.

EPA received one written comment supporting the proposed authorization of the hazardous waste program in Florida.

Resubmittal of Final Application

Florida committed in an Addendum to the Phase II A & B Authorization Plan to request the State Legislature amend Chapter 403 or § 120.60(2), F.S., to remove the time constraints from hazardous waste permit procedures.

On March 29, 1983, EPA and Florida drafted an amendment to exempt hazardous waste permits from the "default" permit provision. The State's General Counsel submitted the amendment to the Florida Legislature. During the 1983 Florida Legislative Session, the Florida Legislature amended Section 403.722 (9) and (10), Florida Statutes Chapter 83-310, Laws of Florida.

The Amendment provides that hazardous waste facility permits shall not be subject to the "default" provision of Section 120.60(2), F.S. This Amendment was signed into law and took effect on July 1, 1983.

On July 15, 1983, Florida resubmitted the application for Components A & B, Phase II Interim Authorization. That resubmittal, which became part of the application, included the legislative amendment to Chapter 120, Florida Statutes, a revised MOA, and a certification from Florida's General Counsel that the legislation is part of the Florida Statutes and that hazardous waste permits are not subject to the State's "default" permit provision.

On November 15, 1983, Region IV EPA and Florida personnel met to negotiate the Phase II, Components A and B, MOA. The MOA will include a comprehensive overview by EPA of Florida's permitting activities.

Public Hearing and Comment Period

By Notice published in the *Federal Register* on August 12, 1983, (48 FR 36828), EPA gave the public until September 14, 1983, to comment on the application. The notice also provided for a hearing to be held in Florida on September 14, 1983, if significant public interest was shown. The public hearing was not held since neither Florida nor EPA received significant public interest in holding the hearing.

Decision

EPA has reviewed the State of Florida's complete application for Interim Authorization Phase II, Components A and B, and has determined that the State program is substantially equivalent to Phase II,

Components A and B, of the federal program as defined in 40 CFR Part 271, Subpart B (48 FR 14257).

In accordance with Section 3006(c) of RCRA, and implementing regulations, the State of Florida is hereby granted Interim Authorization for Phase II, Components A and B, to operate the State's hazardous waste program in lieu of the federal program for permitting the construction and operation of facilities that treat and store hazardous waste, excluding surface impoundments and waste piles.

Executive Order 12291

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

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Sec. 2002(a), 3006, and 7004(b), Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8-7)

Dated: December 2, 1983.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 83-34452 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[WH-FRL-2497-7]

Hazardous Waste Management Program; New Jersey; Application for Interim Authorization, Phase II, Components A and B

AGENCY: Region II, Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA is today announcing the availability for public review of the State of New Jersey's application for Phase II, Components A and B, Interim Authorization, Hazardous Waste

Management Program. By making this announcement, EPA is inviting public comment and is giving notice that EPA will hold a public hearing on the State's application.

This is in accordance with agency regulations to protect human health and the environment from improper handling and disposal of hazardous waste, including the provisions for authorization of State programs to operate in lieu of the Federal program and for a transitional stage in which States can be granted interim program authorization.

DATES: A public hearing is scheduled for February 14, 1984 at 10:00 a.m., in Trenton, New Jersey. The hearing record will be held open for an additional five working days, thereby providing for the submittal of written comments on the application by the close of business on February 21, 1984.

ADDRESSES: EPA will hold a public hearing on New Jersey's application for interim authorization on February 14, 1983 at 10:00 a.m. at the New Jersey State Archives Room, 185 West State Street, Trenton, New Jersey 08625.

Written comments on the application and requests to speak at the hearing should be sent to: Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 905, New York, New York 10278. Telephone (212) 264-0504.

Copies of the Phase II interim authorization application are available during normal business hours at the following addresses for inspection and copying by the public:

New Jersey Department of Environmental Protection, Division of Waste Management, Office of the Director, 32 East Hanover Street, Trenton, New Jersey 08625, Telephone (609) 292-1250

New Jersey Department of Environmental Protection, Southern Field Office, R.D. #1 Route 70, Vincentown, New Jersey 08088, Telephone (609) 859-2958

New Jersey Department of Environmental Protection, Northern Field Office, 1259 Route 46, Parsippany, New Jersey 07054, Telephone (201) 648-3669

New Jersey Department of Environmental Protection, Central Field Office, 120 Route 156, Yardville, New Jersey 08620, Telephone (609) 292-9592

Environmental Protection Agency, Region II Library, 26 Federal Plaza, Room 1002, New York, New York 10278, Telephone (212) 264-2881

Environmental Protection Agency, Headquarters Library, 401 M Street, SW., Room 2404, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 905, New York, New York 10278. Telephone (212) 264-0504.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 *Federal Register* (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, to protect human health and the environmental from the improper handling and disposal of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program took effect.

The State of New Jersey received interim authorization for Phase I on February 2, 1983. Under Phase I, the State is responsible for identifying and listing hazardous wastes and enforcing standards for generators, transporters and interim status facilities.

In the January 26, 1981 *Federal Register* (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of interim authorization. Component A, published in the *Federal Register* January 12, 1981 (46 FR 2802), contains standards for permitting storage and treatment in containers, tanks, surface impoundments and waste piles. Component B, published in the *Federal Register* January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

Component C, published in the *Federal Register* July 26, 1982 (47 FR 32274), contains technical facility standards which apply to ground water protection, surface impoundments, waste piles, land treatment and landfills. The State of New Jersey intends to apply for permitting authority for land disposal facilities when it applies for final authorization.

Since the State of New Jersey's application for Phase II, Components A and B, interim authorization was submitted after the January 26, 1983 deadline for inclusion of certain waste

piles and surface impoundments in Component A, and State's application includes only responsibility for storage and treatment in tanks, containers and incinerators. (See 47 FR 32379, July 26, 1982.) It does not include responsibility for treatment, storage or disposal in surface impoundments, waste piles, land treatment facilities or landfills.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 271, Subpart B.

The State of New Jersey's application for Phase II, Components A and B, interim authorization contains the following:

1. The Commissioner of the New Jersey Department of Environmental Protection's letter requesting program approval.
2. A Program Description which explains the program the State proposes to administer together with any forms to be used to administer the program under State law.
3. A Statement from the State Attorney General that laws of the State provide adequate authority to carry out the program the State proposes to administer.
4. A Memorandum of Agreement which describes the arrangement or understanding between the State Commissioner and the U.S. EPA Region II Administrator regarding the administration and enforcement of the State regulatory program.
5. An Authorization Plan which describes the additions or modifications necessary to qualify the State program for final authorization.
6. Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

As noted in the May 19, 1980 *Federal Register*, copies of complete State submittals for Phase II interim authorization are to be made available for public inspection and comment.

Lists of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

(Secs. 2002(a), 3006, and 7004(b), Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8-7

Dated: December 19, 1983.

Jacqueline E. Schafer,
Regional Administrator, Region II.

[FR Doc. 83-34448 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

GSA Implementation of the Federal Acquisition Regulation (FAR), General Services Administration Acquisition Regulation (GSAR)

AGENCY: Office of Acquisition Policy,
GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on the General Services Administration proposal to establish the General Services Administration Acquisition Regulation (GSAR) as Chapter 5 of the Federal Acquisition Regulations System. The GSAR will implement and supplement the Federal Acquisition Regulation. The new GSAR will supersede the current General Services Administration Procurement Regulations. The following Parts of the proposed GSAR are available for review and comment:

- Part 503 Improper Business Practices and
Personal Conflicts of Interest
- Part 546 Quality Assurance
- Part 505 Publicizing Contract Actions
- Part 547 Transportation

DATES: Comments are due not later than
January 30, 1984.

ADDRESS: Requests for copies of the
proposals and comments should be
addressed to the Office of GSA
Acquisition Policy and Regulations,
Office of Acquisition Policy, Room 4026,
18th & F Streets, NW, Washington, D.C.
20405.

FOR FURTHER INFORMATION CONTACT:
Ida Ustad, Office of GSA Acquisition

Policy and Regulations, Office of
Acquisition Policy, (202) 523-4754.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that these documents will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3501 et seq. This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83-2.

Dated: December 13, 1983.

Richard H. Hopf, III,
Director, Office of GSA Acquisition Policy
and Regulations.

[FR Doc. 83-34412 Filed 12-28-83; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing on Proposed Endangered Status for the San Benito Evening-primrose (*Camissonia benitensis*)

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of public hearing and
extension of comment period on
proposed rule.

SUMMARY: Notice is given that a public
hearing will be held and the comment
period extended on a proposal of
endangered status for the San Benito

evening-primrose. The public hearing
will allow comment from government
officials and the public.

DATE: The public hearing will be held
from 6-8 p.m., on Thursday, January 12,
1984.

ADDRESS: The public hearing will be
held at the West Hills College, Everett
Hall, 300 Cherry Lane, Coalinga,
California.

FOR FURTHER INFORMATION CONTACT:
Mr. Gail C. Kobetich, Field Manager,
Sacramento Endangered Species Office,
1230 "N" Street, 14th Floor, Sacramento,
California 95814 (916/440-2791), or Mr.
John L. Spinks, Jr., Chief, Office of
Endangered Species, U.S. Fish and
Wildlife Service, Washington, D.C.
20240 (703/235-2771).

SUPPLEMENTARY INFORMATION: A
proposal of endangered status for the
San Benito evening-primrose
(*Camissonia benitensis*) was published
in the Federal Register (48 FR 50126) on
October 31, 1983. On November 16, 1983,
a public hearing on this proposal was
requested by Mr. Ed Dunkley,
Administrator, California Association of
Four-Wheel Drive Clubs.

The U.S. Fish and Wildlife Service
will hold a public hearing on proposed
endangered status for the San Benito
evening-primrose from 6-8 p.m., on
Thursday, January 12, 1983, at West
Hills College, Everett Hall, 300 Cherry
Lane, Coalinga, California. The
comment period on the proposal, which
was to have closed on December 30,
1983, is extended until January 24, 1983.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife,
Fish, Marine mammals, Plants,
(agriculture).

Dated: December 20, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 83-34855 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Arboretum Advisory Council; Renewal of Advisory Council

Notice is hereby given that the Secretary of Agriculture has renewed the National Arboretum Advisory Council. The purpose of the Council is to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations. The National Arboretum was created by Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191-194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council meets annually at the National Arboretum in Washington, D.C., to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, site development, and long-range goals. The Council's findings are reported in writing to the Secretary of Agriculture.

It was determined that the renewal of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, D.C., this 19th day of December 1983.

John J. Franke, Jr.,

Assistant Secretary of Agriculture for Administration.

[FR Doc. 83-34460 Filed 12-28-83; 8:45 am]

BILLING CODE 3410-03-M

Commodity Credit Corporation

Study Committee To Study Alternative Methods of Establishing Premiums and Discounts for the Upland Cotton Loan Program; Meeting

Pursuant to the provisions of Section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92-463), notice is hereby given of the following committee meeting.

Name: Study Committee to Study Alternative Methods of Establishing Premiums and Discounts for the Upland Cotton Loan Program.

Date: January 20, 1984.

Place: U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 4306 South Building, Washington, D.C. 20250.

Time: 9:00 a.m.—4:00 p.m.

Purpose: To consider methods of establishing premiums and discounts for grade, staple and micronaire for 1984 and subsequent crops of upland cotton that will represent true relative market values and reflect actual market demand for upland cotton produced in the United States. The committee shall submit the results of the study to the Secretary at the earliest practicable date together with recommendations as the committee considers appropriate.

Agenda: The agenda will include consideration of methods of establishing premiums and discounts for the 1984 and subsequent crops.

The meeting will be open to the public but space and facilities are limited. Public participation will be limited to written statements submitted before the meeting to the Chairman unless their participation is otherwise requested by the Committee Chairman. Written statements should be sent to Charles V. Cunningham, Deputy Director, Analysis Division, ASCS, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013, telephone (202) 447-7954.

Signed at Washington, D.C., on December 22, 1983.

Everett Rank,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 83-34823 Filed 12-28-83; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Humboldt National Forest Grazing Advisory Board; Meeting

The Humboldt National Forest Grazing Advisory Board will meet on February 29, 1984 at 10:00 PST, at the Supervisor's Office, 976 Mountain City Highway, Elko, Nevada.

The meeting is open to the public.

The purpose of the meeting is to discuss:

1. Allotment Management Planning.

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Vol. 48, No. 251

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2. Utilization of Range Betterment Fund.

Dated: December 19, 1983.

B. J. Graves,

Forest Supervisor.

[FR Doc. 83-34365 Filed 12-28-83; 8:35 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 49-83]

Foreign-Trade Zone 77, Memphis, Tennessee; Application for Subzone at Sharp Microwave Oven and Television Plant, Memphis, Tennessee

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, requesting special-purpose subzone status for the microwave oven and television manufacturing plant of Sharp Manufacturing Company of America, Memphis Tennessee, adjacent to the Memphis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 15, 1983. The applicant is authorized to make this proposal under section 7-5-107(6), Tennessee Code Annotated.

On April 2, 1982, the Board authorized the City to establish a foreign-trade zone project in the Memphis port of entry area (Board Order 189, 47 FR 18191, 4/15/82). The project involves a site covering 22 acres at the President's Island industrial park complex and one covering 10 acres at Memphis International Airport.

The proposed subzone is located at Sharp's manufacturing plant covering 40 acres at Raines and Mendenhall Roads, and includes a company warehousing facility covering 125,000 square feet at 4237 Concorde Street in the Airport Industrial Park. Opened in 1979, the facility produces a full line of microwave ovens and color televisions. Although over 60 percent of the parts and material for the ovens and televisions are purchased from domestic sources, certain components are sourced

abroad, such as control panels, magnetron tubes and carousel assemblies for the ovens; and circuit boards, tuners, yokes and speakers for the televisions.

Zone procedures would allow Sharp to export finished televisions and microwave ovens without paying duties on foreign parts and material. On its domestic sales, the company can defer duty payments, and take advantage of the same duty rates that are available to importers of the finished products. The duty rate for televisions is 5 percent, and for microwave ovens, 4 percent. On the imported television and oven parts used by Sharp, the weighted average duty rates are 6.1 and 6.5 percent respectively. The applicant indicates a willingness to accept the same restriction on foreign color picture tubes as applied to Subzone 14A for Sanyo Manufacturing Corporation (Board Order 201, 47 FR 44593, October 8, 1982). The application indicates that zone procedures will encourage Sharp to expand operations in Tennessee rather than abroad, adding up to 125 workers in 1984 to the plant's current labor force of 740.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Max G. Willis, District Director, U.S. Customs Service, South Central Region, Room 244, 423 Canal Street, New Orleans, LA 70130; and Colonel John F. Hatch, Jr., District Engineer, U.S. Army Engineer District Memphis, B-314 Clifford Davis Federal Building, Memphis, TN 38103.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 27, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office,
3693 Central Avenue, Memphis, TN
38111

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1872,
14th and Pennsylvania, NW.,
Washington, D.C. 20230

Dated: December 22, 1983.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 83-34568 Filed 12-28-83; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[Case No. 646]

Exports; Dr. Athol M. Harrison and Microelectronics Research Institute; Order Modifying Temporary Denial Order

The U.S. Department of Commerce ("Department") has moved for an Order modifying the November 23, 1983 Order issued against Dr. Athol M. Harrison and Microelectronics Research Institute (48 FR 54259 (December 1, 1983)), which temporarily denied them, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1983)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The Department seeks to modify the Order by adding recently obtained addresses for Dr. Harrison and three related parties.

The Department's investigation has obtained addresses for three named related parties and an additional address for Dr. Harrison. Based on the representations made by the Department, I find that the requested motion is justified.

Accordingly, it is hereby ordered that, effective immediately, the Order of November 23, 1983, is amended by adding the following addresses for Dr. Harrison and three of the related parties:

Dr. Athol Mr. Harrison, 13th Floor, BP
Center, Thiebolt Center, Cape Town,
South Africa
Manfred Schroder, Buitenverwachting
Farms, Constantia, South Africa
Clive Whitton, 46 Moss Street,
Newlands, South Africa
Optronix, 101 Connaught Road, Parow,
South Africa

A copy of this Modification of the Order of November 23, 1983, shall be served upon the above parties and published in the **Federal Register**.

Dated: December 21, 1983, 5:15 pm E.S.T.

Thomas W. Hoya,
Hearing Commissioner.

[FR Doc. 83-34562 Filed 12-28-83; 8:45 am]

BILLING CODE 3510-25-M

[A-570-001]

Final Determination of Sales at Less Than Fair Value; Potassium Permanganate From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that potassium permanganate from the People's Republic of China (PRC) is being sold in the United States at less than fair value and that "critical circumstances" exist with respect to exports of potassium permanganate from the PRC. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a United States industry and whether material injury or threat of material injury is by reason of massive imports of the merchandise over a relatively short period of time.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT:

John R. Brinkmann, Jr., Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that potassium permanganate from the PRC is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act).

We found that the foreign market value of potassium permanganate from the PRC exceeded the United States price on 100 percent of sales. These margins ranged from 36.78 percent to 42.24 percent. The overall weighted-average margin on all sales compared is 39.63 percent *ad valorem*.

Case History

On February 22, 1983, we received a petition from counsel for Carus Chemical Company on behalf of the potassium permanganate industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of potassium permanganate from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports

are materially injuring, or threaten to materially injure, a United States industry. The petition was amended on June 28, 1983, to allege that critical circumstances exist with respect to exports of potassium permanganate from the PRC. After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated the investigation on March 14, 1983 (48 FR 11482). On April 8, 1983, the ITC found that there is a reasonable indication that imports of potassium permanganate are materially injuring a United States industry.

A questionnaire was presented to counsel for China National Chemicals Import and Export Corporation (SINOCHEM) on March 25, 1983. Responses were received on May 2, May 25, and June 29, 1983.

We published a preliminary determination of sales at less than fair value on August 9, 1983 (48 FR 36175). On November 19–December 2, we conducted verifications in the PRC of the responses submitted by SINOCHEM and in Thailand of the data used to value the PRC factors of production. Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in writing. On August 29, 1983, we held a public hearing.

As discussed under the "Foreign Market Value" section, we determined that the PRC is a state-controlled-economy country for the purposes of this investigation.

Scope of Investigation

The merchandise covered by this investigation is potassium permanganate, an inorganic chemical produced in free flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 420.2800 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

This investigation covers the period from April 1 to December 31, 1982. Since SINOCHEM is the only known PRC exporter of potassium permanganate to the United States, we limited our investigation to that company. We examined 100 percent of United States sales made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the packed CIF United States port price less discount, to the unrelated purchaser. We made deductions from the price for PRC inland freight, ocean freight, and marine insurance.

Foreign Market Value

In accordance with section 773 of the Act, we determined foreign market value by constructing a value for potassium permanganate based on surrogate country costs. The petitioner alleged that the economy of the PRC is state-controlled to the extent that sales of the subject merchandise from that country do not permit a determination of foreign market value under 19 U.S.C. 1677b(a). After analyzing the PRC's economy and considering briefs submitted by the parties, we concluded that the PRC is a state-controlled economy country for purposes of this investigation. Among the factors involved in determining the state-controlled issue were that output quotas for purchase by the state are set and that prices are administered at least up to the quota level.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Section 353.8 of the Commerce Regulations establishes a preference for foreign market value based upon sales prices. The regulations further provide that, to the extent possible, we should determine sales prices on the basis of prices in a "Non-state-controlled economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries which produce potassium permanganate, we determined that India would be the most appropriate surrogate selection. However, the Indian government declined to participate in the investigation. When we determined that there was no other country which manufactures potassium permanganate and which is at a comparable economic level as the PRC, we inquired whether there is a product which is such or similar (as defined in section 771(16) of the Act) to the PRC potassium permanganate.

Based on available information, we did not find any product that could be considered such or similar merchandise within the meaning of the Act. Therefore, pursuant to section 773 of the Act, we proceeded to construct a value based on specific components or factors of production in the PRC, valued on the basis of prices and costs in a non-state-controlled economy country "reasonably comparable" in economic development to the PRC. After analyzing those non-state-controlled economies most similar to the PRC, we concluded that Thailand was a comparable economy for valuation of the PRC factors of production. Valuation of the PRC raw materials, labor and energy was based on publicly available pricing and cost information in Thailand. Valuation of certain costs included in factory overhead were based on the factory experience of a chemical industry company in Thailand. To these values we added an amount for general expenses and profit as required by section 773(e)(1)(B) of the Act, and the cost of all containers and coverings and other expenses, as required by section 773(3)(1)(C) of the Act.

Verification

In accordance with section 776(a) of the Act, we verified data used in making this determination in this investigation by using verification procedures which included on-site inspection of manufacturer's facilities and examination of company records and selected original source documentation containing relevant information.

Affirmative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of potassium permanganate from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist when we find that: (1)(a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

In proceeding to consider whether there is a history of dumping of potassium permanganate from the PRC in the U.S. or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce

antidumping duty orders. There have been no past United States antidumping determinations on potassium permanganate from the PRC. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article IV of the General Agreement on Tariffs and Trade. We found no history of dumping of this product from the PRC.

In determining whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value, we considered all information on the record. In the preliminary determination we determined that the unique circumstances found in this industry are such that we can impute knowledge of sales at less than fair value to the importers even though they could not anticipate the exact basis for our fair value determination.

Counsel for importers of potassium permanganate argues that in past cases we stated that because importers of merchandise from state-controlled economies cannot anticipate how we would calculate the foreign market value in any given case, importers cannot be charged with knowledge, either actual or constructive, that the exporter was selling merchandise at less than its fair value (Canned Mushrooms from the People's Republic of China (48 FR 22770)). Therefore, counsel argues we should reverse our preliminary affirmative critical circumstances determination.

"Canned Mushrooms" should not be interpreted so as to imply that in all state-controlled economy cases, an importer could not have or should not have known that the sales in question were at less than fair value simply because they could not anticipate precisely how we would determine foreign market value. Neither the Act nor its legislative history supports a conclusion that Congress intended to exclude state-controlled economy cases from affirmative determinations of critical circumstances when there are massive imports simply because there is no history of dumping.

In state-controlled economy cases a narrow interpretation of the "knowledge of dumping" test would preclude us from ever reaching an affirmative critical circumstances determination in such instances (assuming there is no history of dumping). Therefore, in our analysis of the "knowledge of sales at less than fair value" issue in state-controlled economy investigations, we must develop tests for determining whether

the importers had, or should have had, knowledge of sales at less than fair value which are not dependent upon specific actual or implied knowledge of which country would be chosen as a surrogate for determining fair value.

We must make the required determination on a case by case basis using all the available information and drawing upon market conditions of the industry subject to the investigation. In the instant case, the product under investigation is potassium permanganate, a fungible product which is produced and marketed primarily by Carus Chemicals of the United States, Asturquímica of Spain and several companies in the PRC. While the petitioner, Carus Chemicals, commands the largest share of the U.S. market, its U.S. market share has dropped by approximately six percent from 1982 to 1983 (JAN-AUG). Imports from the PRC and Spain have accounted for virtually all of the remaining U.S. market share in 1982 and in 1983 (JAN-AUG). There are no other known market economy producers of potassium permanganate which export this product to world markets.

According to the ITC Preliminary Report dated April, 1983, distribution of potassium permanganate, whether domestic or imported, takes place through either direct sales to end-users, or sales to distributors who in turn supply end-user markets. While most imported potassium permanganate is sold by importers to other distributors, some sales are made directly to end-users. In general, distributors do not have agreements with domestic or foreign producers, or with importers, to sell one producer's product to the exclusion of the other's.

Based upon the foregoing we can reasonably assume that the potassium permanganate industry is a closely knit industry acutely aware of pricing from all sources, since sources are very limited. U.S. importers, which compete in the U.S. market with imported potassium permanganate from Spain and the PRC, must be aware of competitive market prices.

Counsel for the importers has produced affidavits from several major importers attesting to the fact that, based on the definition of "dumping", especially in a state-controlled economy case, they had no knowledge of or way of knowing that potassium permanganate from the PRC was being "dumped" in the U.S. market. They contend that much of the PRC permanganate they imported into the United States was purchased in Europe at competitive world prices.

We agree that the importers could not have known exactly how we would calculate fair value with regard to potassium permanganate from the PRC. However, after considering all of the circumstances in this industry, we conclude that U.S. importers knew or should have known that potassium permanganate from the PRC was being sold in the United States at less than its fair value. The following factors have led us to that conclusion:

First, since U.S. importers admitted that the potassium permanganate bought at "competitive prices" in the European market and subsequently imported into the United States was PRC material, they were clearly aware of the price at which potassium permanganate from the PRC, both directly from the PRC and indirectly through Europe, was being sold for in the U.S. and European markets.

Second, since importers were also aware of pricing of potassium permanganate in the U.S. market place from the two other alternative sources (Carus and Spain), they were aware of the entire range of pricing in a market place where pricing is a major factor in determining sales.

Third, since Spain is not a state-controlled economy country and the only other principal producer of the product that exports to the United States, importers knew or should have known, at least generally, what the value of the product is in market economy countries, and thus the minimum likely fair value of the PRC merchandise.

Fourth, during the period of March through July, 1983, (from Initiation of this investigation to Preliminary Determination), the unit price of potassium permanganate imported into the U.S. from the PRC was 22% less than permanganate imported from Spain (all other sources). Importers should have known how to anticipate our antidumping methodology for Spain. They clearly knew that potassium permanganate from the PRC was being sold well below the Spanish price.

Fifth, knowing that potassium permanganate from the PRC was priced significantly below that sold by the only other non-U.S. market economy producer (i.e., the most likely source of our fair value standard), importers knew or should have known that the PRC exports were at less than fair value.

Based on the preceding analysis, we determine that the unique circumstances found in this industry are such that we can impute knowledge of sales at less than fair value to the importers even though they could not anticipate the

exact basis for our fair value determination.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: Recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determination of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last several years (1981-1983); and whether the patterns of imports over that period may be explained by seasonal swings. Based upon our analysis of the information, we determine that imports of the products covered by this investigation appear massive over a relatively short period (March through July 1983).

For the reasons described above, we determine that critical circumstances exist with respect to potassium permanganate from the PRC.

Petitioner's Comments

Comment 1

Petitioner contends that the Department should not use as foreign market value a constructed value based on the PRC factors of production valued in Thailand, a non-producer of potassium permanganate, due to inadequacies and inaccuracies in both the PRC factors of production and in the values obtained in Thailand. Petitioner suggests as an alternative that the Department use actual home market sales prices in India, a free-market economy where potassium permanganate is produced and sold.

DOC Position

Section 773(c) of the Act gives preference to using prices of such or similar merchandise in a "non-state-controlled economy" country. We determined that India was the most appropriate surrogate selection, but the Indian government declined to participate in the investigation. Therefore, we determined foreign market value by constructing a value for potassium permanganate based on cost data obtained in Thailand. All data used in constructing a value for potassium permanganate were satisfactorily verified in accordance with section 776(a) of the Act.

Comment 2

Petitioner contends that the Department should use the incomplete data in such a way as to minimize inaccuracies induced by the incomplete information, since SINOCEM refused to provide to the Department prior to

verification requested information on production volumes and production processes for four of the six plants.

DOC Position

We determined that constructed value should be calculated based on weighted-average factors of production, weighing each plant according to its total output. Indications are that the most efficient of the PRC potassium permanganate plants we verified may be representative of the four plants not verified. However, the PRC did not give us production volume and processes for all plants. Therefore, we will not attribute the factors of production from the most efficient verified plant to the other non-verified plant source that would allow SINOCEM effectively to reduce margins by selecting the most efficient plant. Accordingly, we based our factors of production for potassium permanganate from the PRC on data from the two verified plants (representing 56 percent of total 1982 production), weighted to reflect their relative production volumes. The net result is that the more efficient plant is weighted as 11 percent and the less efficient plant is weighted as 89 percent of the production under consideration.

Comment 3

The Department must use the actual price quotations it has obtained and verified in Thailand as the basis for valuing the raw materials potassium hydroxide and manganese ore. Any adjustments to these prices to account for the fact that they must be imported or that they do not comport with world market prices would deviate from § 353.6(a)(1) of Commerce Regulations that such cost of materials in the free-market economy be determined in the "ordinary course of business."

DOC Position

In both instances we used those prices actually verified in Thailand. For manganese dioxide we used the average price of the domestic product.

With regard to potassium hydroxide (KOH), we used the imported price of potassium hydroxide from France, as the product is not domestically produced in Thailand but must be imported. Although the PRC potassium permanganate producers do purchase locally produced KOH, we have no information concerning petitioner's allegation that the PRC must import the raw material to produce the KOH. Neither do we have the information from which to develop a verified market price in the country of origin of the imported KOH. Our inability to develop verified information on both issues is

due to failure of respondent to provide, on a timely basis, requested information. Accordingly, the most reliable (and the only verifiable) price for KOH in Thailand is the price from France for 90 percent flake KOH.

A price for liquid KOH was not available in Thailand but was derived by applying to the imported flake price, the ratio by which U.S. liquid KOH at 100 percent exceeds the U.S. flake price at 100 percent.

Comment 4

Petitioner contends that since SINOCEM reported, and the ITA verified, raw material usages in potassium permanganate production in the PRC on a "100 percent basis" (i.e., that usages were reported as if the raw material were 100 percent pure), the Department must ensure that the values obtained for raw material in Thailand are converted from an "as is basis" to a "100 percent basis."

DOC Response

The raw material usages verified and used in the constructed value calculations are derived from the actual amounts of raw materials used. The values obtained in Thailand for these materials are those most like in chemical composition to the actual materials used in the PRC.

Comment 5

Petitioner argues that the Department must discard the coal usage figure it used for one of the verified plants. The Petitioner bases this argument on the following points:

First, it is technologically impossible. Second, it represents a full 50 percent decrease from the figure reported by the PRC. Third, it is considerably less than that reported by the PRC at their other coal-fired plants. Fourth, it is dramatically less than the second verified plant with its eight times greater output and commensurate economies of scale. Fifth, the laboratory report used by the Department to determine that the plant used low cost lignite coal was submitted after the verification process had been completed.

DOC Position

The laboratory report and usage figure in question were verified on site in the PRC. However, we have adjusted the coal usage figure of the verified plant due to the inconsistencies of the coal usage figures noted in the production records of the four plants not verified.

The differences in coal usage by each plant raised questions as to the representativeness of the coal usage of

the verified plant. Since we were denied the opportunity to preview and consider for verification the factors of production for the four other potassium permanganate plants, the verified plant's coal usage figure has been adjusted to reflect a weight-average of coal usage for the four plants for which the information is available.

Comment 6

Petitioner argues that the Department, in calculating constructed value, should use the price of imported chemical grade manganese dioxide imported into Thailand rather than domestic prices for battery grade manganese of unknown purity.

DOC Position

We obtained prices in Thailand for both domestically produced and imported manganese dioxide. When requesting domestic prices for manganese dioxide with a purity equivalent to the type used by the PRC potassium permanganate producers, three different sources responded with price quotations for the battery grade, although information on specific purities was not available. Furthermore, government of Thailand mineral production statistics show a unit price for battery grade manganese dioxide which is two times the unit price for the chemical grade. Finally, if the estimated costs incumbent upon bringing the imported manganese dioxide from the country of origin into Thailand are deducted from the average import price, the adjusted import price is approximately the same as the average domestic price.

Therefore, based on the fact that the PRC potassium permanganate producers purchase their manganese dioxide locally and that the local Thailand price is supported by the estimated adjusted import prices, we used the local Thailand price to value the PRC manganese dioxide.

Respondent's Comments

Comment 1

The Respondent argues that if the Department decides to use the imported price of potassium hydroxide in solid (flake) form in Thailand, all expenses associated with the importation of potassium hydroxide should be deducted. It further argues that an adjustment must be made between the solid and liquid forms based on the pricing differentials in a market economy where both are available.

DOC Response

This issue was discussed in detail in our response to "Petitioner Comment 3." Additionally, we examined the pricing structure of liquid and solid potassium hydroxide in the U.S. and determined that an adjustment to liquid potassium hydroxide was warranted based on price differentials between the two forms. Since our analysis also showed that the price of potassium hydroxide imported into Thailand was consistently below quoted U.S. prices, we felt that any adjustment to the imported price to cover the cost of importing the product would result in an unrealistic distortion of the Thai market price. Accordingly, we made no adjustment to the imported price to cover the costs of importation.

Comment 2

Respondent contends that based on the BTU output of the fuel oil used in one of the verified PRC potassium plants, the Department should use the #1500 fuel oil prices obtained in Thailand. If the Thailand fuel oil is not locally refined the crude oil locally produced, adjustments should be made to account for the fact that the PRC produces and refines its own crude and fuel oil.

DOC Response

As the BTU output of Thailand #1500 fuel oil is approximately equivalent to the BTU output of the fuel oil used in the PRC plant, the cost of #1500 fuel oil was used to value the PRC factor of production. Since the price of fuel oil in Thailand is set by the government, the question of whether or not the fuel oil is refined locally or imported is not a determining factor of the domestic market price for fuel oil. Additionally, in 1982, crude oil imported for distillation was exempt from all duty and taxes, while the duty for imported fuel oil was minimal. Therefore, we find no basis for making the requested adjustment.

Comment 3

Respondent contends that the labor rates obtained from a U.S. owned chemical plant in Thailand are higher than those which should be applied to the PRC potassium permanganate plant. Specifically, it argues that the rates obtained refer to an employee with a higher overall skill level, greater fringe benefits, and longer years on the job than what would be found in a PRC potassium permanganate plant.

DOC Position

We determined during verification that the PRC potassium permanganate employees are salaried and that

monthly wages are paid when employees were off the job for leave or sickness. The PRC plant employees work 5½ days per week. No other benefits are paid (for health, insurance, etc.). The Thailand labor rates verified were on the same basis as the PRC potassium permanganate plant employees, salaried, with paid leave, and 5½ day week. However, Thailand employees receive health insurance and savings plan benefits which cost the employer about 2 percent of the gross monthly salaries. Accordingly, the Thailand labor rates used to value the PRC labor rates were reduced by 2 percent.

We found no evidence to indicate, as respondent suggests, that the labor rates paid to Thailand workers at different skill levels were any higher in the U.S. owned plant than elsewhere in Thailand.

Importers' Comments

Comment 1

ICC Industries, Inc., the ICD Group, and Advent Chemical Co., U.S. importers of potassium permanganate, entered this proceeding to argue that the Department's finding of "critical circumstances" in the preliminary determination was inconsistent with section 733(e) of the Act and should be reversed. They contend that there is no reasonable basis to believe or suspect that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of this investigation at less than its fair value. In past antidumping proceedings, Commerce has consistently been unwilling to impute to importers a knowledge of dumping involving state-controlled economies because importers cannot know, or have no way of finding out, whether merchandise from state-controlled economies is being sold in the United States at less than its fair value. This is because in state-controlled economy cases, fair value cannot be ascertained until Commerce has selected a surrogate country, an event which occurs after an antidumping proceeding has already been initiated.

DOC Position

The Department's response to this comment is contained in the "Affirmative Determination of Critical Circumstances" section of this notice.

Comment 2

If the Department persists in imputing to importers a knowledge of dumping it should consider that potassium

permanganate manufactured by the petitioner is available for purchase in Europe, and such potassium permanganate is priced below potassium permanganate from the PRC and Spain. It would be unreasonable to expect importers, who knew they could purchase petitioner's potassium permanganate in Europe at prices less than PRC produced potassium permanganate, to know or even suspect that the latter was priced at less than fair value.

DOC Position

The importer submits no information to substantiate this claim. From information available to the Department it appears that sales by petitioner to Europe terminate before the period of investigation here and thus, even if low-priced, were not relevant to this determination.

Comment 3

There is no reasonable basis to believe or suspect that there have been massive imports of the class or kind of merchandise subject to the investigation over a relatively short period of time. There is no discernible trend of imports steadily increasing on a monthly basis throughout 1983 although there was a one month surge in 1983 (March to April) and in 1982 (February to March) which gives credence to the argument that increases during this calendar period are the result of a seasonal rise in demand for the product. Furthermore, dramatic increases in imports from the PRC in March to April 1983 were matched by even more dramatic increases in imports from all other countries during this period.

DOC Position

The Department's response to this comment is contained in the "Affirmative Determination of Critical Circumstances" section of this notice.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs service to continue to suspend liquidation of all entries of potassium permanganate from the PRC subject to this investigation which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall continue to require a cash deposit, the posting of a bond or other security equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit

requirements established in our preliminary determination of August 9, 1983, are no longer in effect. The weighted-average margins are as follows:

Manufacturers/producers/exporters	Weighted average margins percent
SINOCHEM	39.63
All Other Manufacturers/Producers/Exporters	39.63

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: December 22, 1983.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 83-24506 Filed 12-28-83; 8:45 am]

BILLING CODE 3510-DS-M

Issuance of Export Trade Certificate of Review to U.S. Export and Trade Co.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review of U.S. Export &

Trading Company (USEX). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 83-00024."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares,

merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

Description of Certified Conduct

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from USEX on September 23, 1983. The application was deemed submitted on September 27, 1983. A summary of the application was published in the *Federal Register* on October 13, 1983 (48 FR 46603). Based on analysis of the information contained in the application, the response to supplementary questions, and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by USEX meet the four standards of the Act:

Export Trade

(a) Ultraviolet resistant polyvinyl chloride (UVR-PVC) irrigation pipes, fittings, and related products ("Products").

(b) Export Trade Services (consulting, international market research, product research and design exclusively for export, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders, foreign exchange, financing and collection, and taking title to goods) in connection with the foregoing Products.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in the Export Trade in the Export Markets, USEX may:

(a) Enter into an agreement with Brownline Pipe Company, Inc. ("Brownline") of Laguna Hills, California to serve as Brownline's sales

representative in the Export Markets by providing Export Trade Services. In this agreement:

(1) Brownline may agree not to sell, directly or through any intermediary other than USEX, into the Export Markets, nor to any purchaser in the United States for resale in the Export Markets; and

(2) Brownline may authorize USEX to appoint, after consultation with and approval by Brownline, exclusive agents and distributors ("distributors") in the Export Markets.

(b) Enter into agreements with distributors in the Export Markets that USEX and Brownline will not sell into a territory in the Export Markets assigned to a distributor except through that distributor nor to any purchaser in the United States for resale in the distributor's assigned territory.

(c) Independently or with Brownline and/or distributors in the Export Markets,

(1) Establish prices at which Products will be sold in the Export Markets,

(2) Establish quantities of Products to be sold in the Export Markets, and

(3) Allocate territories or customers among the distributors in the Export Markets.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the *Federal Register*. Under Section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Dated: December 23, 1983.

Irving P. Margulies,
Acting General Counsel.

[FR Doc. 83-34478 Filed 12-28-83; 8:45 am]
BILLING CODE 3510-DR-M

Minority Business Development Agency

Minority Export Development Consultant Program; Applications Solicitation

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Export Development Consultant Program (MEDC) to operate one (1) MEDC project for a period of 12 months beginning on or about April 1, 1984.

The MEDC project will function in the Commonwealth of Puerto Rico. The total cost of the project is \$200,000. Federal funds are estimated at \$170,000 (85%) with 15% (\$30,000) provided by the applicant as a cost sharing requirement which can be a combination of cash, in-kind and fees for services. The funding instrument will be a cooperative agreement. The applicant will assist minority business entrepreneurs to enter and compete in the international marketplace.

Applications will be judged on the experience and capabilities of the firm and its staff in developing export marketing plans, identifying potential markets and trade leads and providing technical assistance necessary to complete international transactions including documentation, short-term financing and shipping. It is advisable that applicants have an existing office in the Commonwealth of Puerto Rico.

DATE: The closing date for application is February 1, 1984. Applications must be postmarked on or before this date.

ADDRESS: Industry and Technology Division; Office of Enterprise Development; Minority Business Development Agency; U.S. Department of Commerce; Washington, D.C. 20230; (202 377-5217).

FOR FURTHER INFORMATION CONTACT: Raul A. Quiros, Acting Assistant Director; Office of Enterprise Development; Minority Business Development Agency; Room 5099C U.S. Department of Commerce; Washington, D.C. 20230 (202/377-5217).

SUPPLEMENTARY INFORMATION: MEDC program is authorized by Executive Order 11625. Questions concerning the preceding information, copies of application kits, and applicable regulations can be obtained at the above address.

(11,800 Minority Business Development
(Catalog of Federal Domestic Assistance))

Dated: December 23, 1983.

Raul A. Quiros,

Acting Assistant Director for Enterprise
Development.

[FR Doc. 83-34479 Filed 12-28-83; #45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries
Service, National Oceanic and
Atmospheric Administration,
Commerce.

SUMMARY: The North Pacific Fishery
Management Council, established by
Section 302 of the Magnuson Fishery
Conservation and Management Act
(Pub. L. 94-265, as amended), has
established Plan Maintenance Teams
(PMTs) for fishery management plans
initiated by the Council and a Herring
Research Workgroup to review herring
research needs in the fishery
conservation zone off Alaska. The
Salmon PMT and the Herring Research
Workgroup of the North Pacific Fishery
Management Council will hold separate
public meetings as follows.

The Herring Research Workgroup will
meet at the Northwest and Alaska
Fisheries Center, Conference Room 369,
2725 Montlake Boulevard East, Seattle,
Washington, on January 18, 1984, from 1
p.m. to 5 p.m. The Workgroup will
review a draft request for proposal for
offshore herring research in the Eastern
Bering Sea and prepare a report for
submission to the Council on February 1,
1984. The Salmon PMT will meet in
Seattle, Washington, on January 19,
1984, from 8 a.m. to 5 p.m. The meeting
will be at the Seattle Sheraton Hotel, 6th
and Pike, in conjunction with the U.S./
Canada Pacific salmon interception
negotiations. The Team's meeting room
will be posted at the U.S. delegation
room by 8 a.m. and the Team will
discuss the status of chinook salmon
stocks and 1984 management measures
for the Southeast Alaska salmon
fisheries. The public is invited to attend
these meetings.

FOR FURTHER INFORMATION CONTACT:

Jim Glock, North Pacific Fishery
Management Council, P.O. Box
103136, Anchorage, Alaska 99510,
(907) 274-4563

or

Al Millikan, Washington Department of
Fisheries, M-1 Fisheries Center WH-

10, University of Washington, Seattle,
Washington 98195, (206) 543-4682

Dated: December 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries
Resources Management, National Marine
Fisheries Service.

[FR Doc. 83-34500 Filed 12-28-83; 6:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting With Partially Closed Session and Public Meetings of Its Scientific and Statistical Committee, Salmon Plan Development Team, Salmon Advisory Subpanel, and Its Budget and Foreign Fishing Committees

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice of public meetings with
partially closed sessions.

SUMMARY: This notice sets forth the
schedule and proposed agenda of the
forthcoming meetings of the Pacific
Fishery Management Council (Council),
its Scientific and Statistical Committee
(SSC), Salmon Plan Development Team
(SPDT), Salmon Advisory Subpanel, and
its Budget and Foreign Fishing
Committees. The Council was
established by Section 302 of the
Magnuson Fishery Conservation and
Management Act (Pub. L. 94-265, as
amended), and the Council has
established a SSC, planning teams,
advisors, and committees to assist the
Council in carrying out its
responsibilities.

DATES: January 10-12, 1984.

ADDRESS: The meetings will be held at
the Portland Marriott Hotel, 1401 SW
Front Ave., Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT:
Mr. Joseph C. Greenley, Executive
Director, Pacific Fishery Management
Council, 526 SW Mill Street, Portland,
Oregon 97201 (503-221-6352).

Agendas—Council (closed session)—
January 11, 1984 (8 a.m. to 9 a.m.) in
Salon E. Discuss the status of
international fishery negotiations, the
status of current litigation, and
personnel matters. Only those Council
members and staff having security
clearances will be allowed to attend this
closed session.

Council (open session)—January 11-
12, 1984 (9 a.m. to 6 p.m., January 11; 8
a.m. to 5 p.m., January 12) in Salon E.
Adopt revisions to the Statement of
Organization, Practices, and Procedures
(SOPPs) for Council operations; review

written comments on the Groundfish
Plan Amendment and the Salmon
Framework Plan Amendment, additional
comments from the public and Council's
SSC, Advisors, Teams, NMFS and
NOAA staffs, and adopt final plan
amendments for submission to the
Secretary of Commerce; conduct a
scoping session for a comprehensive
salmon management plan amendment;
review the format and schedule for
developing the 1984 salmon regulations;
and, consider foreign fishing
applications. A public comment period
is scheduled for 3 p.m., January 11, 1984.

SSC (open session)—January 10-11,
1984 (10 a.m. to 5 p.m., January 10; 8 a.m.
to 5 p.m., January 11) in Salon D. Review
confidentiality of statistics; review
documents on distribution of Pacific
whiting and mackerel in the area south
of 39° N. latitude and potential for gear
conflicts; review methods of revising in-
season salmon stocks abundance and
other procedures; review petition to
control entry into groundfish fishery;
and any other items which may be
brought before the Council. The SSC will
conduct a public comment period
beginning at 3 p.m., January 10.

SSC (closed session)—January 10,
1984 (11 a.m. to 11:30 a.m.) in Salon D.
Review recommendations for
appointments to the SSC and SPDT and
develop recommendations for the
Council.

Budget Committee (open session)—
January 10, 1984 (5 p.m.) in the Executive
Director's room. Review the
appropriation for the Council's
programmatic budget and prepare
recommendations for Council action.

**Foreign Fishing Committee (open
session)—**January 10, 1984 (6 p.m.) in the
Executive Director's Room. Review
applications to conduct joint ventures
off Washington, Oregon, and California.

**Salmon Plan Development Team
(open session)—**January 10-12, 1984 (10
a.m. to 5 p.m., January 10; 8 a.m. to 5
p.m., January 11-12) in the Eugene
Room. Review allocation options
approved by the Council in the
Framework Plan Amendment for public
review and prepare comments for the
Council; prepare comments on methods
of revising in-season salmon stock
abundance and quotas, and review the
procedures and documents to be used to
develop the 1984 salmon regulations.
Time for public comments is set for 3
p.m., January 10. Members of the public
may submit oral or written statements
regarding these matters.

**Salmon Advisory Subpanel (open
session)—**January 11, 1984 (6 a.m. to 5
p.m.) in Salon B and C. Review the
allocation options in the Salmon

Framework Plan Amendment adopted by the Council for public review; discuss procedures for establishing the 1984 salmon regulations; and, discuss the substance of a comprehensive salmon plan and other matters that may be referred to the Subpanel and conduct a public comment period beginning at 10 a.m., January 11. All sessions of the meeting are open to the public, with the exception of the closed sessions as mentioned in the Council's and SSC's agendas.

Dated: December 23, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-34499 Filed 12-28-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Exported From the People's Republic of China

December 22, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, to be effective on December 30, 1983. For further information contact Diana Bass, International Trade Specialist (202/377-4212).

Background

On October 12, 1983 a notice was published in the *Federal Register* (48 FR 46410) which, among other things, established import restraint limits for cotton dresses in Category 336 and women's, girls' and infants' knit shirts and blouses of man-made fibers in Category 639, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on October 1, 1983 and extends through December 29, 1983. The notice also stated that the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, if no mutually satisfactory solution is reached on levels for these categories during consultations, to limit its exports during the twelve-month period following the ninety-day consultation period to the following amounts:

Category	12-month level of restraint (Dec. 30, 1983-Dec. 29, 1984) (dozen)
336	72, 268
639	631, 639

The United States Government has decided, pending further consultation concerning these categories to control imports of cotton and man-made fiber textile products in Categories 336 and 639 exported during the twelve-month period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the *Federal Register*.

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if they are allowed to enter, will be charged to the levels established for the twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 22, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 30, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 336 and 639, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on December 30, 1983 and extending through December 29, 1984, in excess of the following levels of restraint:

Category	12-month level of restraint (dozen)
336	72, 268
639	631, 639

Textile products in Categories 336 and 639 which have been exported to the United States during the ninety-day period which began on October 1, 1983 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-34474 Filed 12-28-83; 8:43 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton and Man-made Fiber; Apparel Products Exported From Thailand

December 22, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, to be effective on December 22, 1983. For further information contact Gordana Slijepcevic (202/377-4212).

Background

A CITA directive dated August 16, 1983 (49 FR 37684) established import limits for specified categories of cotton, wool and man-made fiber textile products, including Categories 336/339, 340, and 604 pt. (only TSUSA 310.5049), produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1983. At the request of the Government of Thailand flexibility provided under the terms of the Bilateral Cotton, Wool and

Man-Made Fiber Textile Agreement of July 27, and August 8, 1983 is being applied in the form of carryforward to the limits for Categories 338/339, 340, and 604 pt. (only TSUSA 310.5049). The amounts of carryforward used in these categories in 1983 will be deducted from the 1984 category limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 22, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of August 16, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1983.

Effective on December 22, 1983, you are directed to amend the levels of restraint established for Categories 338/339, 340, and 604 pt. (only TSUSA No. 310.5049) to the following amounts, according to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983:¹

Category	12-month adjusted limit ¹
338/339	662,285 dozen.
340	121,842 dozen.
604 pt. (only TSUSA No. 310.5049)	430,694 pounds.

¹ The levels have not been adjusted to reflect any imports exported after December 31, 1982.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

¹ The agreement provides, in part, that (1) under certain specified conditions any non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; during the first agreement year special swing is available between Categories 313, 314, 315, and 320; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-34475 Filed 12-28-83; 9:45 am]
BILLING CODE 3510-DR-M

Amending the Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products From Thailand

December 23, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11851 of March 3, 1972, as amended, has issued the directive published below to be effective on January 1, 1984. For further information contact Gordana Slijepcevic (202/377-4212).

Background

A CITA directive dated October 20, 1982 (47 FR 46732) established an export visa requirement for cotton, wool and man-made textile and apparel products subject to the terms of the bilateral agreement between the Governments of the United States and Thailand. Effective on January 1, 1984 that visa requirement will be amended to provide that:

(1) Down and feather-filled apparel in Categories 353, 354, 653, and 654 must be visaed if exported after December 31, 1982.

(2) Visas for Category 604 will be required to indicate "604 (1)" for acrylic spun yarn in T.S.U.S.A. No. 310.5049 and "604" for all other T.S.U.S.A. numbers in the category except 310.5049 for goods exported after June 30, 1983.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 23, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of January 26, 1977, concerning certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Effective on January 1, 1984, the directive of January 26, 1977, as amended, is hereby further amended to provide the following:

(1) Down and feather-filled apparel in Categories 353, 354, 653, and 654 must be visaed if exported after December 31, 1982.

(2) Visas for Category 604 will be required to indicate "604 (1)" for merchandise in T.S.U.S.A. No. 310.5049 and "604" for all other

T.S.U.S.A. numbers in the category 310.5049 for goods exported after June 30, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-34473 Filed 12-28-83; 8:45 am]
BILLING CODE 3510-25-M

Adjusting the Import Restraint Levels for Certain Wool and Man-Made Fiber Apparel Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 22, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11851 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 29, 1983. For further information contact Gordana Slijepcevic, International Trade Specialist (202/377-4212).

Background

A CITA directive of February 15, 1983 (48 FR 7246) established limits for certain wool and man-made fiber textile products in Category 443/643 (men's and boys' wool and man-made fiber suits), produced or manufactured in Yugoslavia and exported during 1983, pursuant to the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia. The two governments have agreed to extend the final year of the agreement three months, beginning on January 1, 1983 and extending through March 31, 1984. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner to adjust the twelve-month limit for Category 443/643 and its sub-limit to the designated fifteen-month limits. The group limit has been adjusted to include carryover and the sub-limit has been adjusted to include swing and carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as

amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 22, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of February 15, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during 1983.

Effective on December 29, 1983, paragraph 1 of the directive of February 15, 1983 is hereby amended to adjust the levels of restraint established for wool and man-made fiber textile products in Categories 443 and 643 exported during the fifteen month period beginning on January 1, 1983 and extending through March 31, 1984, according to the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of October 25 and 26, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia¹ to the following:

Category	15-month level of restraint ¹
443/643	23,864 doz of which not more than 12,228 doz shall be in Cat. 443.

¹ The levels of restraint have not been adjusted to reflect any imports exported after December 31, 1982.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-34476 Filed 12-29-83; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage

Committee will be held on Tuesday, February 7, 1984; Tuesday, February 14, 1984; Tuesday, February 21, 1984; and Tuesday, February 28, 1984 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

December 22, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 34476 Filed 12-29-83; 8:45 am]

BILLING CODE 3510-01-M

Department of the Navy

Final Notice of Decision To Locate the East Coast Landing Craft Air Cushion (LCAC) Operational Complex at Naval Amphibious Base (NAVPHIBASE), Little Creek, Va.

Pursuant to the provisions of the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (§ 1505.2 of title 40, Code of Federal Regulations), the Department of the Navy announces its decision to locate the East Coast Landing Craft Air Cushion (LCAC) operational complex at the Naval Amphibious Base (NAVPHIBASE), Little Creek, Virginia. The Draft and Final Environmental Impact Statements for this project were filed with the Environmental Protection Agency and the public on March 11, 1983, and October 14, 1983, respectively.

It is the opinion of the Department of the Navy that environmental impacts associated with the project can be minimized by implementing mitigation measures enumerated. These measures are especially designed to provide for the safety of swimmers, surfers, boaters and certain marine species, and to minimize the effects of LCAC noise on the surrounding communities and tourism in the area.

The Department of the Navy recognizes the potential of conflicts and accordingly will establish an interaction group with the specific charter to address any conflicts that might arise as connected with either the construction of the Operational Base or subsequent operation of the LCAC vehicles. It is the intent of the Commander in Chief, U.S. Atlantic Fleet, to insure that mitigation measures described are accomplished and that LCAC operations are in conformance with assessments forecast in the Final Environmental Impact Statement.

Dated: December 23, 1983.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.

[FR Doc. 83-34494 Filed 12-29-83; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee Panel on Future Training Space; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Future Training Space will meet on January 16, 1984, at

the Naval Training Equipment Center, Orlando, Florida. The meeting will commence at 12:30 p.m. and terminate at 4:45 p.m. on January 16, 1984. All sessions of the meeting will be open to the public.

The purpose of the meeting is to orient the members with various training devices currently in use in the Navy and will generally cover presentations and tours concerning Front-End Analysis, the Visual Technology Research Simulation Facility, the Advanced Simulation Concepts Laboratory.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: December 23, 1983.

William F. Roos, Jr.,

*Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.*

[FR Doc. 83-34402 Filed 12-28-83; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee will meet on January 17 and 18, 1984, at the Naval Training Equipment Center, Orlando, Florida. The first session will commence at 8:00 a.m. and terminate at 10:30 a.m. on January 17, 1984. The second session will commence at 10:30 a.m. and terminate at 11:30 a.m. January 17, 1984. The third session will commence at 11:30 a.m. and terminate at 4:30 p.m. on January 17, 1984. Finally, the fourth session will commence at 8:30 a.m. on January 18, 1984, and continue to completion. The first and third sessions on January 17, 1984 will be open to the public. The remaining two sessions will be closed to the public.

The purpose of the meeting is to orient NRAC members with various training devices currently in use in the Navy, review the status of all ongoing Committee studies, and discuss new topics to be studied. The open sessions will generally cover presentations and discussions relating to front-end analysis, surface training, helmet mounted display, STAGS/TOW simulator and visual technology research simulation. The remaining sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in

fact properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that the second and fourth sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: December 23, 1983.

William F. Roos, Jr.,

*Lieutenant, JAGC, U.S. Naval Reserve
Alternate Federal Register Liaison Officer.*

[FR Doc. 83-34403 Filed 12-28-83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. C184-127-000]

Amoco Production Co.; Application

December 22, 1983.

Take notice that on December 9, 1983, Amoco Production Company (Applicant) 200 East Randolph Drive, Chicago, Illinois 60601, filed an application pursuant to Section 7(b) of the Natural Gas Act and the Commission's Regulations thereunder, for an order authorizing and approving abandonment of certain pipeline and compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to abandon 30 miles of 6-inch gas transmission line, together with related compression facilities, that runs from a central collection point in the Foley Field, Baldwin County, Alabama, to a point of intersection with existing facilities of United Gas Pipeline Company, all in Baldwin County, Alabama. Applicant states that it has entered into a contract for the sale of these facilities to Florida Gas Transmission Company (FGT) and has requested that the proposed abandonment order be issued concurrently with the approval of FGT's certificate of public convenience and necessity to operate these facilities, all as more fully described in said application.

Any person desiring to be heard or to make any protest with reference to said application should on or before January

11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR Section 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34529 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-105-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

December 22, 1983.

Take notice that on November 29, 1983, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-105-000 a request, as supplemented on December 15, 1983, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of CertainTeed Corporation (CertainTeed) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 645 dt equivalent of natural gas per day on behalf of CertainTeed for a term of one year. Columbia states that the gas to be transported would be purchased from POI Energy, Inc., by CertainTeed and would be used for boilers and asphalt process heaters at CertainTeed's Milan, Ohio, plant. It is stated that Columbia would receive the gas at various existing delivery points in Ohio, Pennsylvania, and West Virginia and redeliver such gas to Columbia Gas of Ohio, Inc., the

distribution company serving CertainTeed. Columbia further states that the gas to be purchased by CertainTeed involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of Section 102, 103, and 107 of the Natural Gas Act of 1978.

Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34529 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-35-000]

**Consolidated Gas Supply Corp.;
Proposed Changes in FERC Gas Tariff**

December 22, 1983.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on December 19, 1983, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. The proposed changes, shown on Fourth Revised Sheet No. 71-A, Sixth Revised Sheet No. 72 and Third Revised Sheet No. 72-A, are proposed to be effective December 1, 1983, and provide for the crediting of the jurisdictional portion of certain supplier refunds to Account 191, Unrecovered Purchased Gas Cost, for subsequent flow-through through

Consolidated's PGA mechanism. Such credits would be reflected in Consolidated's demand and commodity rates on an "as received" basis. The proposed changes in the way Consolidated flows through supplier refunds would apply to all customers taking natural gas at a rate specified in Volume No. 1 of Consolidated's tariff. That portion of supplier refunds due to customers who purchase gas at a rate not specified in Consolidated's Volume No. 1 tariff (i.e., two special contract customers) will continue to be made in a lump sum. Also, when refunds accumulate to \$10 million, Consolidated will file revised tariff sheets within thirty days with a proposed effective date no later than thirty days thereafter.

The treatment proposed would allow Consolidated's rates to be more competitive, would permit Consolidated to bring unit rates down to their appropriate levels, and would be in line with its suppliers' treatment of refunds.

Consolidated requested a waiver of the Commission's Rules and Regulations, specifically Section 154.22, Notice Requirements. Consolidated also requested a permanent but limited waiver of Section 154.38(d)(4)(iv)(a) to permit rate changes to be made more frequently than semi-annually when refunds accumulate to \$10 million. Additionally, Consolidated requested a waiver of any other of the Commission's Rules and Regulations as may be deemed necessary to permit the revised tariff sheets to become effective as proposed.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All petitions or protests should be filed on or before January 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34531 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT84-5-001]

El Paso Natural Gas Co.; Tariff Filing

December 22, 1983.

Take notice that on December 19, 1983, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, First Revised Sheet No. 329 to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that subsequent to the filing of its First Revised Volume No. 1 Tariff in supersession of Original Volume No. 1 and prior to the Commission's acceptance thereof effective November 26, 1983, the Commission, by letter order dated October 18, 1983 issued at Docket No. TC83-40-000 by the Director of the Office of Pipeline and Producer Regulation, accepted Fourteenth Revised Sheet No. 63-C. 3 as part of El Paso's Original Volume No. 1 Tariff, effective November 1, 1983. Said revised tariff sheet updated the alternate Annual Average Day End Use Profiles of El Paso's customers to reflect changes in their Priority 2(a) essential agricultural use requirements. El Paso states that tendered First Revised Sheet No. 329, when accepted by the Commission and permitted to become effective, will incorporate the updated alternate Priority 2(a) profiles approved for inclusion in El Paso's Original Volume No. 1 Tariff as part of superseding First Revised Volume No. 1.

To provide continuity in the effectiveness of provisions in El Paso's Original Volume No. 1 Tariff and superseding First Revised Volume No. 1, El Paso requests that the Commission grant waiver of its applicable rules, regulations and orders as may be necessary to permit tendered First Revised Sheet No. 329 to become effective November 26, 1983, the date El Paso's First Revised Volume No. 1 Tariff was made effective by the Commission.

El Paso states that copies of the instant filing have been served upon all parties of record in Docket No. GT84-5-000 and, otherwise, upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before Jan. 4, 1984. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34532 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-139-003]

El Paso Natural Gas Co.; Tariff Filing

December 22, 1983.

Take notice that on December 16, 1983, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, Second Revised Sheet No. 221 to its FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that by order issued October 28, 1983 at Docket No. RP83-139-000 the Commission accepted for filing and suspended, until December 17, 1983, tariff sheets filed September 30, 1983 reflecting revision of the minimum bill provision of El Paso's Rate Schedule G. By motion filed by El Paso on even date with the instant filing, tariff sheets implementing the revised minimum bill were placed into effect on December 17, 1983, as permitted by the Commission's October 28, 1983 suspension order and Section 4(e) of the Natural Gas Act.

El Paso further states that due to a misclassification of costs as between fixed and variable in the determination of its settlement rates at Docket No. RP82-83, *et al.*, the amount of \$0.3840 per dekatherm shown in the revised minimum bill provision as the fixed-cost component of the Rate Schedule G Commodity Charge is incorrect. Tendered Second Revised Sheet No. 221, when accepted by the Commission and permitted to become effective, will set forth the correct lower amount of \$0.3790 per dekatherm.

El Paso requests, pursuant to Section 154.51 of the Commission's Regulations, that the Commission grant waiver of the notice requirements in Section 154.22 of its Regulations so as to permit tendered Second Revised Sheet No. 221 to become effective December 17, 1983, the effective date of the revised minimum bill provision as permitted by the Commission's October 28, 1983 suspension order.

El Paso states that copies of the instant filing have been served upon all parties of record in Docket No. RP83-139-000 and, otherwise, upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before January 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34533 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP79-10-013 and RP80-134-015]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 22, 1983.

Take notice that on December 16, 1983, Great Lakes Gas Transmission Company (Great Lakes) tendered for filing the following changes to its FERC Gas Tariff.

Tariff Sheets To Be Effective January 1, 1984

First Revised Volume No. 1

Fourth Revised Sheet No. 3
Thirteenth Revised Sheet No. 4
Substitute forty-fifth Revised Sheet No. 57

Original Volume No. 2

Eighth Revised Sheet No. 3
Nineteenth Revised Sheet No. 53
Tenth Revised Sheet No. 77
Second Revised Sheet No. 122
Sixth Revised Sheet No. 123
Third Revised Sheet No. 123-A
Ninth Revised Sheet No. 151
Fourth Revised Sheet No. 152
Fourth Revised Sheet No. 223
Fourth Revised Sheet No. 245

Great Lakes states that the Commission on July 8, 1983, and November 30, 1983, issued Opinions 179 and 179-A, respectively. The above tariff sheets were filed to comply with the changes required in Great Lakes'

tariff to reflect the cost classification, allocation and rate design methodology approved by the Commission in Opinion Nos. 179 and 179-A.

Great Lakes also states that copies of its filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34534 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-21-002]

Locust Ridge Gas Co.; Filing

December 22, 1983.

Take notice that on December 19, 1983, Locust Ridge Gas Company (Locust Ridge) tendered for filing, pursuant to an informal request by the Commission Staff, the following tariff sheets:

Original Volume No. 3

Second Substitute Fourteenth Revised Sheet No. 1A superceding
Substitute Fourteenth Revised Sheet No. 1A

Original Volume No. 1

Second Substitute Seventh Revised Sheet No. 1A superceding
Seventh Revised Sheet No. 1A

Locust Ridge states that copies of its filing have been furnished to all parties of concern to this docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests

should be filed on or before January 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34535 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-116-000]

Lone Star Gas Co.; Request Under Blanket Authorization

December 22, 1983.

Take notice that on December 5, 1983, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP84-116-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Lone Star proposes to install a sales tap for the delivery of natural gas to Atlantic Richfield Company (ARCO) under the authorization issued in Docket No. CP83-59-000, as amended in Docket No. CP83-59-002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes the installation of a sales tap on its 6-inch Line GN in Carter County, Oklahoma. This tap would be utilized to deliver an estimated 263,000 Mcf of gas annually to ARCO, it is stated. It is further stated that Lone Star proposes to reactivate 13,063 feet of Line GN which were previously abandoned in place.

Lone Star asserts that the gas flowing through this tap would be sold under Lone Star's Industrial Rate 1, which is an interruptible rate approved by the Oklahoma Corporation Commission.

Lone Star estimates the cost of the tap to be \$16,860, the cost of reactivating Line GN to be \$500 and states that all costs would be financed from working capital.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is

filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34536 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-11946-000]

Mobil Producing Texas & New Mexico Inc.; Application To Amend Certificate of Public Convenience and Necessity

December 22, 1983.

Take notice that on December 12, 1983, Mobil Producing Texas & New Mexico Inc. (MPTM), Nine Greenway Plaza—Suite 2700, Houston, Texas 77046, filed in Docket No. G-11946-000 pursuant to the Natural Gas Act and the Natural Gas Policy Act of 1978 an application requesting that the certificate referred to above be amended to permit the sale of gas from a different plant in accordance with the agreement dated December 7, 1983.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should, on or before January 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34537 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-55-000]

Montaup Electric Co.; Order Accepting for Filing and Suspending Rates in Part, Denying Request for Rejection, Ordering Summary Disposition, Noting Interventions, and Establishing Hearing Procedures

Issued: December 22, 1983.

On October 27, 1983, Montaup Electric Company (Montaup) submitted for filing a proposed two-step increase in rates for firm power service to two affiliated and three non-affiliated wholesale customers.¹ The proposed Step-one rates would increase revenues by approximately \$16.7 million (8.2%) for the calendar year 1984 test period. The proposed Step-two rates would result in an additional increase of approximately \$700,000 representing a total increase of \$17.4 million (8.5%).² Montaup requests effective dates for the Step-one and Step-two rates of December 26, 1983, and December 27, 1983, respectively. However, if the Commission suspends both steps for the same period, Montaup further requests that the proposed Step-one rates be deemed withdrawn.

Montaup concurrently submitted for filing revisions to three agreements under which (1) Blackstone Valley Electric Company (Blackstone) and Eastern Edison Company (Eastern Edison) rent 115 kV transmission facilities to Montaup and (2) Montaup rents certain transmission facilities to Eastern Edison. The parties' agreements provide for an annual revision to the rate of return component reflected in the formula rates used to derive rental charges. The current filing reflects a decrease in the equity return rate of 2.05%.

Notice of Montaup's filing was published in the *Federal Register*, with comments due on or before November 22, 1983. The Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers (Rhode Island) filed a timely intervention and protest which raised no substantive issues but requested a maximum suspension of Montaup's filing as well as rejection of that part of the proposed rate increases reflecting the inclusion of CWIP in rate base.

¹ Montaup's affiliated customers are Blackstone Valley Electric Company and Eastern Edison Company. The non-affiliated customers include Newport Electric Corporation, Pascoag Fire District, and the Town of Middleborough. See Attachment for rate schedule designations.

² About \$12 million of the Step-two increase is supported by the inclusion in rate base of construction work in progress (CWIP) other than pollution control or fuel conversion CWIP.

The Attorney General of the Commonwealth of Massachusetts (Massachusetts) also filed a timely intervention, protest, and request for a five-month suspension. If the rate increases are not suspended in their entirety, Massachusetts alternatively seeks a five-month suspension of only part of Montaup's proposed rate increases—namely, that part of the proposed increases reflecting (1) the amortization of expenses associated with the abandonment of the Pilgrim II generation project, and (2) the inclusion of CWIP associated with the construction of the Seabrook II generating unit.

On November 22, 1983, Montaup's three non-affiliated customers (Customers) filed a protest and a motion to intervene that requested a maximum suspension of the proposed rates. In support of their suspension request, the Customers contend that the proposed rates reflect many improper cost of service calculations, including: (1) an excessive amount of CWIP in rate base, (2) excessive operating expenses, (3) an excessive rate of return on equity, and (4) excessive purchased power and regulatory Commission expenses.

On December 6, 1983, Montaup filed an answer to the interventions. While Montaup does not oppose the requests for intervention, it argues that the allegations presented provide no basis for suspending the proposed firm power rates for five months. In doing so, Montaup defends many of its cost of service calculations including the amounts of CWIP included in rate base.

Finally, on December 7, 1983, Customers filed a supplemental petition that is discussed below.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed interventions of Massachusetts, Rhode Island, and the Customers serve to make them parties to this proceeding.

The Commission will deny Rhode Island's request to reject the entire portion of the proposed rate increases relating to the inclusion of CWIP in rate base. Rhode Island has provided no basis for its request and we have determined that, except as described immediately below, Montaup's proposed inclusion of CWIP is in substantial compliance with the Commission's filing requirements.³

³ See *Municipal Light Boards of Reading and Wakefield, Massachusetts v. FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

As a separate matter, however, we note that Montaup's CWIP⁴ request is in excess of the amount allowed by our regulations. Specifically, § 35.26(d)(1)(i) limits the amount of CWIP allowed in rate base to "six percent of the test period aggregate wholesale revenues under the rate schedule to be superseded." Montaup's filing includes an amount of CWIP (\$60 million) to support a revenue increase permitted under the six percent limit, but also erroneously includes an additional amount of CWIP (\$11.3 million) that it was permitted to include in rate base for purposes of developing present rates. The apparent reason for Montaup's inclusion of the additional \$11.3 million in CWIP is its assumption that that amount is not subject to the six percent limit.⁵ That assumption is wrong.

The \$11.3 million of CWIP underlying the present rates arises from Montaup's unique status as the only utility that was permitted to include CWIP in rate base subject to refund, pursuant to the "severe financial difficulty" standard of the former section 2.16 of our regulations.⁶ That section was explicitly revoked by the currently effective CWIP regulations. Yet, even if section 2.16 were still effective, Montaup would be required to reapply and make a sufficient factual showing under that section in order to reflect any CWIP, including the \$11.3 million, in rate base.⁷ Since Montaup cannot now apply under the revoked § 2.16 to retain this amount, the entire CWIP request is subject to the Commission's current regulation and, thus, its six percent limit. Accordingly, summary disposition of Montaup's CWIP request will be ordered and Montaup will be required to refile its rates reflecting total CWIP (other than pollution control or fuel conversion) in rate base equal to the amount which would support no more than a 6 percent revenue increase.⁸

Our analysis also reveals that Montaup has failed to use a synchronized interest expense deduction for tax purposes as required by well-established Commission

⁴ We are not persuaded to the contrary by any arguments in Montaup's filing or its December 6, 1983 Answer.

⁵ See, e.g., Direct Testimony of Richard M. Burns at 3-4.

⁶ Specifically, Montaup was permitted to include specified amounts of CWIP in rate base, subject to refund, in its two previous rate filings in Docket Nos. ER82-325-000 and ER83-110-000, et al.

⁷ Of course, construction relating to qualifying pollution control and fuel conversion facilities is not subject to the six percent limitation, 18 CFR 35.16. The \$11.3 million in CWIP discussed above does not relate to these facilities.

⁸ We note that our disposition of Montaup's CWIP request rests on the unique set of circumstances presented.

precedent.⁹ Accordingly, summary disposition will also be ordered as to this issue. In refile its rates, Montaup shall incorporate this adjustment as well.

Our preliminary review of Montaup's filing indicates that its proposed Step-one and Step-two firm power rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, as discussed below, we shall accept Montaup's Step-two rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

Before doing so, a discussion of Customers' supplemental protest is appropriate. Customers refer to an additional rate filing submitted by Montaup in Docket No. ER84-102-000 on November 16, 1983. This latest Montaup filing (1) proposes a Purchase Power Adjustment Clause (PPAC) as a revision to the rate schedules Montaup here proposes and (2) requests a waiver of the notice requirements so that the proposed PPAC would have the same effective date as the currently proposed rate schedules. Customers' supplemental protest requests that we consider the effect of the PPAC on Montaup's proposed rate when determining an appropriate suspension period.

We emphasize that we view with extreme disfavor the bifurcated nature of Montaup's filing of the proposed PPAC shortly after the filing of the proposed rates to which the clause would apply. In fact, whether the proposed PPAC should be treated as amending the filing in this proceeding (with a corresponding deferral of the original filing date) is a close question. We have not treated Montaup's second filing as an amendment to its original filing in part because our suspension decision would remain the same, as discussed below. But we hereby give notice that we will be inclined to treat similar bifurcated rate filings in the future as amendments to pending filings to avoid unnecessary complication of the Commission's review process and suspension decision. Here, in response to the Customers' request, we have considered Montaup's filed rates under the assumptions that the PPAC would and would not later be accepted for filing.¹⁰

⁹ See, e.g., *Gulf States Utilities Company*, 20 FERC ¶ 61,039 (1982).

¹⁰ In advance of a more thorough review of the PPAC, the Commission is not now prepared to speculate as to the likely disposition of that filing. A later order in Docket No. ER84-102-000 will address the PPAC.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our preliminary review indicates that both the Step-one and Step-two rates, as adjusted by summary disposition, may not yield substantially excessive revenues, and this conclusion would not change even if the effect of the PPAC is taken into account. Thus, both steps would merit a one day suspension. However, consistent with the company's request, we shall deem Montaup's Step-one rates to be withdrawn and we shall suspend the proposed Step-two rates, as adjusted by summary disposition, for one day, to become effective on December 28, 1983, subject to refund.

Our preliminary review also indicates that the proposed revisions to the three rental agreements have not been shown to be just and reasonable and may yield excessive revenues. However, since these revisions provide for a rate decrease, we shall accept them for filing to become effective on December 26, 1983 (60 days after filing), without suspension. Given our concern as to the reasonableness of these rate schedules, we shall set them for investigation, for possible prospective adjustment.

The Commission orders:

(A) Rhode Island's request for partial rejection is hereby denied.

(B) Summary disposition is hereby ordered, as noted in the body of this order, with respect to Montaup's CWIP request and with respect to Montaup's failure to synchronize its interest deduction for tax purposes. Within thirty (30) days of the date of this order, Montaup shall refile its rates and supporting cost data to reflect these determinations.

(C) Montaup's proposed Step-two rates for firm power service, as adjusted by the summary dispositions ordered above, are hereby accepted for filing and are suspended for one day, to become effective on December 28, 1983, subject to refund. The Step-one rates are deemed to have been withdrawn.

(D) Montaup's proposed revisions to the three rental agreements are accepted for filing to become effective, without suspension, on December 26, 1983. As noted in the body of this order, these revisions shall be a subject of the hearing convened in this docket with any Commission-ordered modifications to be prospective only.

(E) Pursuant to the authority contained in and subject to the

jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Montaup's rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

Kenneth F. Plumb,

Secretary.

MONTAUP ELECTRIC CO., DOCKET NO. ER84-55-000, RATE SCHEDULE DESIGNATIONS

Designation	Description
(1) Fifteenth Revised Sheet No. 4 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Fourteenth Revised Sheet No. 4 and Second Revised Sheet No. 4-2)	Base rates.
(2) Fourteenth Revised Sheet No. 6 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Thirteenth Revised Sheet No. 6)	Fuel adjustment clause.
(3) Second Revised Sheet No. 6.1 and First Revised Sheet Nos. 6.2 and 6.3 under FPC Electric Tariff, Original Volume No. 1 (Supersedes First Revised Sheet Nos. 6.1 and Original Sheet Nos. 6.2 and 6.3)	Oil conservation adjustment clause (OCA).
(4) Supplement No. 14 to Rate Schedule FERC No. 64 (Supersedes Supplement Nos. 11, as supplemented, 12 and 13)	Exhibit A—Rates for contract demand service.
(5) Supplement No. 15 to Rate Schedule FERC No. 64	OCA clause.
(6) Supplement No. 4 to Rate Schedule FERC No. 75 (Supersedes Supplement No. 1, as supplemented)	Exhibit A—Rates for contract demand service.
(7) Supplement No. 5 to Rate Schedule FERC No. 75	OCA clause.
(8) Supplement No. 2 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 1, as supplemented)	Exhibit A—Rates for contract demand service.
(9) Supplement No. 3 to Rate Schedule FERC No. 76	OCA clause.

MONTAUP ELECTRIC CO., DOCKET NO. ER84-55-000, RATE SCHEDULE DESIGNATIONS—Continued

Designation	Description
(10) Supplement No. 6 to Rate Schedule FERC No. 58 (Supersedes Supplement No. 5) Eastern Edison Co.	Revised cost of capital
(11) Supplement No. 12 to Rate Schedule FERC No. 5 (Supersedes Supplement No. 11) Blackstone Valley Electric Co.	Revised cost of capital
(12) Supplement No. 12 to Rate Schedule FERC No. 21 (Supersedes Supplement No. 11)	Revised cost of capital

[FR Doc. 83-34538 Filed 12-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-56-013]

Northwest Pipeline Corp.; Filing of Annual Compliance Report

December 22, 1983.

Take notice that on December 14, 1983, Northwest Pipeline Corporation (Northwest) tendered for filing its Annual Compliance Report and Cost-of-Service Study pursuant to Sections 13 and 14 of its Rate Schedule T-1 as contained in its FERC Gas First Revised Volume No. 1 Tariff.

Northwest proposes a change in its Rate Schedule T-1 Facility Charge effective February 1, 1984, in accordance with Section 13 of Rate Schedule T-1, as supported by its Cost-of-Service Study.

Northwest also proposes to implement an Amortizing Adjustment effective February 1, 1984, in accordance with Section 14 of Rate Schedule T-1.

Copies of this filing have been served on Pacific Interstate Transmission Company and all jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211, 385.214). All such petitions or protests should be filed on or before January 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34539 Filed 12-26-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP82-114-000, et al.]

**Northwest Central Pipeline Corp.;
Informal Settlement Conference**

December 22, 1983.

Take notice that on January 10, 1984, at 10:00 a.m., an informal settlement conference will be convened in the above-captioned proceeding. The meeting place for the conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are invited to attend.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34540 Filed 12-28-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP83-11-014]

**Transcontinental Gas Pipe Line Corp.;
Tariff Filing**

December 22, 1983.

Take notice that on December 16, 1983, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2. The sheets are proposed to become effective on February 1, 1984, and were filed in accordance with Article IX of Transco's "Settlement Agreement as to Rates" approved by Commission letter order dated April 28, 1983, in Docket No. RP83-11. The revised tariff sheets reflect a "tracking" rate reduction of 0.4 cents per dt in the commodity rate or delivery charge of Transco's sales and firm transportation rate schedules.

Article IX of the settlement agreement provides for adjustments to Transco's jurisdictional rates to give effect to inclusion in rate base of any decreases in the amount of Transco's outstanding advance payments after March 31, 1983. The rate reduction proposed is occasioned by a decrease of \$19,290,414 in the advance payment balance of Transco from that which existed at July 31, 1983.

Transco further states that copies of the instant filing have been mailed to each of its customers, and State Commissions and other parties to Docket No. PR83-11.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34541 Filed 12-28-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. C184-141-000]

**Union Oil Company of California;
Application for Certificate of Public
Convenience and Necessity**

December 22, 1983.

Take notice that on December 13, 1983, Union Oil Company of California (Union), Union Oil Center, Los Angeles, California 90017 filed an application for a certificate of public convenience and necessity authorizing the sale of gas to El Paso Natural Gas Company (El Paso) from certain leases located in San Juan and Rio Arriba Counties, New Mexico. These leases were conveyed to El Paso by Union's predecessor in the 1950's and have been the subject of extensive litigation between Union and El Paso for over ten years (see *El Paso Natural Gas Co. v. Sun Oil Co.*, 708 F.2d 1011 (5th Cir. 1983)).

The application by Union follows an agreement between the parties to settle a lawsuit filed by El Paso on August 1, 1983, in *El Paso Natural Gas Co. v. Tenneco Oil Co., et al.*, No. 83-50539 (D. Ct. Harris County, Texas) wherein El Paso asserted a right to reassign the properties to Union. Under the settlement Union will voluntarily accept reassignment of the properties effective October 1, 1983, upon receipt of a certificate satisfactory to it. Union states that the applicable maximum lawful price for most of the gas subject to the Commission's jurisdiction is that prescribed by Section 109 of the Natural Gas Policy Act of 1978 (NGPA) because such gas was committed or dedicated to interstate commerce prior to enactment of the NGPA but was not subject to a

just and reasonable rate set by the Commission.

Any person desiring to be heard to make protest with reference to said application should on or before January 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 83-34542 Filed 12-26-83; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP72-133-021, et al.]

**United Gas Pipe Line Company, et al.;
Filing of Pipeline Refund Reports and
Refund Plans**

December 22, 1983.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown in the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 3, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
10/3/83	United Gas Pipe Line Co.	RP72-133-021	Report.
11/29/83	Algonquin Gas Transmission Co.	RP72-110-034	Do.
12/2/83	United Gas Pipe Line Co.	RP81-81-010	Do.
12/6/83	Columbia Gas Transmission Corp.	TA83-2-21-008	Do.
12/12/83	Alabama-Tennessee Natural Gas Co.	RP73-77-023	Do.

APPENDIX—Continued

Filing date	Company	Docket No.	Type filing
12/13/83	Distrigas of Massachusetts Corp.	RP61-34-006	Do.

[FR Doc. 83-34543 Filed 12-28-83; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59139A; TSH-FRL 2499-2]

Toxic Substances; Premanufacture Notification Requirements; Approval of Test Marketing Exemptions of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TME-84-8, TME-84-9, and TME-84-10, three applications for test marketing exemptions (TMEs), under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: December 21, 1983.

FOR FURTHER INFORMATION CONTACT:

Wendy Cleland-Hamnett, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-205, 401 M St. SW., Washington, DC 20460, (202-382-3736).

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 substances described below, under the conditions set out in the applications, and for the time periods 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 applications. All other conditions described in the applications must be met. The following additional restrictions apply: For TME-84-8, the

exemption is granted provided that workers are required to wear protective gloves. The Material Safety Data Sheet must include the requirement for workers to wear gloves.

TME 84-8

Date of receipt.—November 8, 1983.

Notice of receipt.—November 18, 1983 (48 FR 52505).

Applicant.—METACOMET, Inc.

Chemical.—(Generic) Substituted tetrazole.

Use.—Photographic ingredient.

Production volume.—1-10 kg.

Number of customers.—Confidential.

Worker exposure.—Dermal exposure from use only for 12 workers.

Test marketing period.—1 year.

Commencing on.—December 21, 1983.

Risk assessment.—Based on analogy with structurally related substances the Agency identified potential health effect concerns. In addition, actual test data showed moderate acute toxicity based on oral exposure. However, worker exposure is expected to be very low and the Material Safety Data Sheet will require workers to wear protective gloves. No environmental releases are expected; therefore, the test market substance should not pose an unreasonable environmental risk.

Public comments.—None.

TME 84-9

Date of receipt.—November 8, 1983.

Notice of receipt.—November 18, 1983 (48 FR 52505).

Applicant.—METACOMET, Inc.

Chemical.—(Generic) Substituted benzimidazole/benzoxazole.

Use.—Sensitizer for photographic materials.

Production volume.—1-10 kg.

Number of customers.—Confidential.

Worker exposure.—From use only up to 12 workers.

Test marketing period.—1 year.

Commencing on.—December 21, 1983.

Risk assessment.—The test market substance is structurally related to chemicals that exhibit adverse health effects. However, the exposures associated with the test marketing activities are expected to be extremely low. In addition, the substance is not expected to be absorbed through the skin. Although the substance is analogous to substances which exhibit adverse ecological effects, no environmental releases are expected; therefore, environmental risks are insignificant.

Public comments.—None.

TME 84-10

Date of receipt.—November 9, 1983.

Notice of receipt.—November 18, 1983 (48 FR 52505).

Applicant.—American Hoechst Corporation.

Chemical.—Benzenesulfonic acid, 2,4,6-trimethyl, sodium salt.

Use.—To produce printing plates containing the diazo.

Production volume.—1 kg.

Number of customers.—12.

Exposure information.—Submitter estimates that during the test marketing period, only one technician will be exposed for one-half hour while weighing the substance before addition to a reaction flask. This will be done under supervision of a chemist. Subsequent handling of the product produced from the TME's substance which contains <0.5% as unreacted impurity was estimated to involve 2 to 3 technicians for a total of less than 1 hour.

Test marketing period.—1 Year.

Commencing on.—December 21, 1983.

Risk assessment.—No significant health or environmental concerns were identified. The estimated worker exposure to the test market substance is expected to be low. In addition due to expected low releases, the test substance should not pose an unreasonable environmental risk.

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: December 21, 1983.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 83-34497 Filed 12-28-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42032A; TSH-FRL 2459-3]

Toxic Substances; Formamide; Decision To Adopt Negotiated Testing Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to the Interagency Testing Committee's (ITC) designation of formamide for health effects testing consideration, EPA announced in the *Federal Register* of May 23, 1983, its preliminary decision not to initiate rulemaking under the Toxic Substances Control Act (TSCA) based on the Agency's tentative

acceptance of a testing program submitted by BASF Wyandotte Corporation. On the basis of its review and consideration of public comments, the Agency finds no reason to alter its preliminary decision. Therefore, for the reasons set forth in both this notice and the Agency's preliminary decision of May 23, 1983, EPA is not proposing a section 4(a) rule to require health effects testing of formamide at this time.

FOR FURTHER INFORMATION CONTACT:

Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a notice, published in the *Federal Register* of May 23, 1983 (48 FR 23098), which announced the Agency's preliminary decision not to propose a rule under section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601) to require health effects testing of formamide. This decision was based on the Agency's evaluation of the existing data for formamide, the expected exposure profile for formamide and the tentative acceptance of a testing program submitted by the BASF Wyandotte Corporation.

A draft of the BASF proposal was included in the public record (docket number OPTS-42032). The Agency requested comments on both its tentative decision not to require testing of formamide and on the proposed testing scheme.

II. Summary of Testing Programs

The BASF Wyandotte Corporation proposal consists of a range-finding study followed by a 90-day subchronic study which is designed to characterize the potential subchronic effects of formamide. Because dermal exposure is the most common route of human exposure, the program is designed to clarify the doses at which formamide causes toxic effects after repeated exposure to intact skin over a prolonged period (BASF Wyandotte Corporation, 1982). Proposed voluntary testing program on formamide, November 9, 1982). The study will be performed in male and female Wistar rats, using dermal exposure for 6 hours/day and 5 days/week. The protocols for these studies have been reviewed by EPA scientists and are acceptable. They are

available for examination in the public record of this proceeding.

Industry has agreed to begin the range-finding study on or about October 1, 1983. After the range-finding study has been completed, a program review by BASF and EPA personnel will occur to review the data and select doses for the subchronic study. The subchronic phase of testing can be expected to begin by early 1984. The subchronic testing, including histopathology, will be completed in late 1984. An additional 3 months will be required for preparation of the study report and consultation among BASF and EPA scientists. The final report is expected to be submitted to the Agency in early 1985.

III. EPA's Response to Public Comments

The Agency received comments from the Natural Resources Defense Council (NRDC) on EPA's proposed decision to adopt a negotiated testing program for formamide in lieu of rulemaking to require testing under section 4(a) of TSCA. NRDC expressed a general concern over the Agency's policy of accepting Negotiated Testing Programs in appropriate circumstances. The Agency addressed NRDC's concerns about negotiated testing in previous notices issued in the *Federal Register* of January 5, 1982 (47 FR 335) and July 18, 1983 (48 FR 32730) which discussed the negotiated testing programs for alkyl phthalates and 4-chlorobenzotrifluoride.

The Agency does not agree with NRDC's comment that EPA's experience with negotiated agreements demonstrates a substantial likelihood that industry will not fulfill its testing commitments. While EPA acknowledges that negotiated testing agreements are not legally enforceable, the Agency believes that there are strong practical reasons to expect that, in the vast majority of cases, the companies will live up to their agreement. In the event that this does not occur, the Agency still has the option of issuing a test rule.

The NRDC commented that the public did not have an opportunity to participate in the actual negotiation process for formamide. The EPA believes that the public has been provided sufficient opportunity to comment during the pre-negotiation phase and the post-negotiation phase of this negotiated testing agreement. Also, public comment was solicited before a final determination was made and this final notice was published. NRDC did not choose to participate or attend the public meetings which discussed testing programs for formamide and they did not submit comments on the proposed testing program for formamide.

NRDC also expressed a concern that public access to original data obtained from negotiated testing programs would be limited. EPA does not agree. EPA has the same authority to disclose health and safety data generated from negotiated testing as it would if the testing were conducted under a rule. Section 14(b)(1)(A)(i) makes data from any health and safety study on a chemical in "commercial distribution" (which should include virtually all chemicals designated by the Interagency Testing Committee) releasable on the same basis as does section 14(b)(1)(A)(ii) which relates to data developed as a result of a test rule.

IV. Public Record

EPA has established a public record for this decision not to pursue testing under section 4 [docket number OPTS-42032]. This record includes:

- (1) *Federal Register* notice designating formamide to the priority list and public comments received thereon.
- (2) Communications before industry testing proposal consisting of letters, contact reports of telephone conversations, and meeting summaries.
- (3) Testing proposals and protocols.
- (4) Published and unpublished data.
- (5) *Federal Register* notice requesting comment on the negotiated testing proposal and comments received in response thereto.
- (6) *Federal Register* notice announcing a final decision to adopt a negotiated testing program.

The record, containing the basic information considered by the Agency in developing the decision, is available for inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday except legal holidays in Rm. E-107, 401 M St. SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: December 21, 1983.

William D. Ruckelshaus,
Administrator

(FR Doc. 83-34447 Filed 12-28-83; 8:45 am)
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3087-EM]

Emergency and Related Determinations; Mississippi

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Mississippi (FEMA-3087-EM), dated December 21, 1983, and related determinations.

DATED: December 21, 1983.

FOR FURTHER INFORMATION CONTACT:

Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

Notice is hereby given that, in a letter of December 21, 1983, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from flash flooding on December 3-4, 1983, is of sufficient severity and magnitude to warrant an emergency declaration under Public Law 93-288. I therefore declare that such an emergency exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to loan or donate Government-owned mobile homes to the State of Mississippi for the purpose of providing temporary housing under the provisions of Section 404 of Pub. L. 93-288. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and re delegated to me, I hereby appoint Mr. R. Jackson Ingram of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Mississippi to have been affected adversely by this declared emergency:

Grenada County for assistance as authorized by the President's declaration. (Catalog of Federal Domestic Assistance No. 83.516, Disaster assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-34436 Filed 12-28-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM**Central Bancorporation, Inc., Central Colorado Company, and C.C.B., Inc.; Acquisition of Bank Shares by a Bank Holding Company**

Central Bancorporation, Inc., Denver, Colorado; Central Colorado Company, Denver, Colorado, and C.C.B., Inc., Denver, Colorado, 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 become a bank holding company by acquiring 100 percent of the voting shares of Central Bank at Centennial, N.A., Littleton, Colorado, a *de novo* bank. 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)).

Central Bancorporation, Inc., Denver, Colorado; Central Colorado Company, Denver, Colorado, and C.C.B., Inc., Denver, Colorado, have also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage through Central Bancorp Life Insurance Company, Denver, Colorado, an existing subsidiary of Central Bancorporation, Inc., in credit related life insurance. These activities would be performed from the new office of the Central Bank at Centennial, N.A., Littleton, Colorado, and the geographic areas to be served are Littleton, Colorado, and the southern portion of the city and county of Denver, Colorado. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. not later than January 20, 1984.

Board of Governors of the Federal Reserve System, December 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34430 Filed 12-28-83; 8:45 am]

BILLING CODE 6210-01-M

Citizens and Southern Georgia Corporation; Proposed Acquisition of First Southeastern Company

Citizens and Southern Georgia Corporation, Atlanta, Georgia, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of First Southeastern Company, Atlanta, Georgia.

Applicant states that the proposed subsidiary would engage in the activities of discount securities brokerage, extending securities credit in conformity with the Board of Governors' Regulation T (12 CFR Part 220), and incidental activities permissible under the Board of Governors' Regulation T (12 CFR 225.4(a)(15)). These activities would be performed from offices of Applicant's subsidiary in Atlanta, Georgia, Knoxville, Tennessee, and Tampa, Florida and the geographic area to be served is the United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any person wishing to comment on the application should submit views in writing to be received by the Reserve Bank not later than January 18, 1984.

Board of Governors of the Federal Reserve System, December 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34421 Filed 12-28-83; 8:45 am]

BILLING CODE 6210-01-M

C.R.N.B. Shares, Inc., et al.; 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 the 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. *C.R.N.B. Shares, Inc.*, Richwood, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Cherry River National Bank, Richwood, West Virginia. Comments on this application must be received not later than January 23, 1984.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *IT&S of Iowa, Inc.*, Oskaloosa, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Iowa Trust & Savings Bank, Oskaloosa, Iowa. Comments on

this application must be received not later than January 23, 1984.

C. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Banker's Bancorporation of Wisconsin, Inc.*, Madison, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Wisconsin Independent Bank, Madison, Wisconsin. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than January 20, 1984.

2. *Midland Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Hawthorne Bank of Wheaton, Wheaton, Illinois. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than January 18, 1984.

Board of Governors of the Federal Reserve System, December 22, 1983.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 83-34423 Filed 12-28-83; 8:45 am]

BILLING CODE 6210-01-M

First Virginia Banks, Inc., et al.; 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 the 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 Virginia Banks, Inc.*, Falls Church, Virginia; to acquire 100 percent of the voting shares or assets of First

Virginia Bank-Hanover, Ashland, Virginia. Comments on this application must be received not later than January 23, 1984.

B. Federal Reserve Bank of St. Louis (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First American Bancshares, Inc.*, North Little Rock, Arkansas; to acquire 93.95 percent of the voting shares or assets of Grand National Bank, Hot Springs, Arkansas. Comments on this application must be received not later than January 23, 1984.

C. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Town & Country Bancorp, Inc.*, Springfield, Illinois; to acquire 98.3 percent or more of the voting shares or assets of Bank of Palmyra, Palmyra, Illinois. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than January 20, 1984.

Board of Governors of the Federal Reserve System, December 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34424 Filed 12-28-83; 8:45 am]

BILLING CODE 6210-01-M

Virginia National Bankshares, Inc.; Proposed De Novo Nonbank Activities by a Bank Holding Company

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any

questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Virginia National Bankshares, Inc.*, Norfolk, Virginia (financing and insurance activities: Virginia): To engage, through its indirect subsidiary, Sovran Credit Corporation, Elizabeth City, North Carolina, in making direct consumer installment loans, secured and unsecured, to individuals; purchasing consumer installment sales finance contracts, extending direct loans to dealers for the financing of inventory (floor planning) and working capital purposes; making, acquiring and servicing, for its own account or for the account of others, loan secured principally by mortgages on real property and acting as agent for the sale of credit life and credit accident and health insurance and physical damage insurance, all of which are directly related to extensions of credit by Sovran Credit Corporation. These activities would be conducted from offices in Springfield, Virginia, and serve an area within a five-mile radius of that office. Comments on this application must be received not later than January 18, 1984.

Board of Governors of the Federal Reserve System, December 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34425 Filed 12-28-83; 8:48 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Compendium of Protective Eyewear; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC); and will be open to the public for observation and participation, limited only by the space available:

Compendium of Protective Eyewear

Date: January 18, 1984.

Time: 9:00 a.m. to 3:00 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review the proposed NIOSH compendium of protective eyewear, including the methods to be used for obtaining data, the report format, and dissemination of results. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: C. Eugene Moss, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-8483, Commercial: 513/684-8483.

Dated: December 19, 1983.

James O. Mason,

Director, Centers for Disease Control.

[FR Doc. 83-34413 Filed 12-28-83; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 82N 0032]

List of Drug Products Suitable for Abbreviated New Drug Applications (1982); Supplement Number Two

Correction

In FR Doc. 83-33426, beginning on page 55923 in the issue of Friday, December 16, 1983, make the following correction:

On page 55923, third column, under "Additions", the entry for Dexamethasone should have read:

DEXAMETHASONE

SOLUTION; ORAL

0.5MG/5ML

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-83-1318]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:
Proposal: Property Disposition Handbook, Reconditioning Acquired Properties
Office: Housing
Form number: HUD Handbook 4325.1
Frequency of submission: On Occasion
Affected public: Individuals or Households, Businesses or Other For-Profit, Small Businesses or Organizations
Estimated burden hours: 13,490
Status: Revision
Contact: Freeman Grote, HUD, (202) 755-5740, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the

Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Accounting Handbook for
Acquired Properties**

Office: Housing

Form number: HUD Handbook 4305.3

Frequency of submission: On Occasion

Affected public: Businesses or Other
For-Profit

Estimated burden hours: 18,880

Status: Revision

Contact: Freeman Grote, HUD, (202)
755-9174, Robert Neal, OMB, (202)
395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Conveyance and Disposition
Information Collections**

Office: Housing

Form Number: FHA-477, FHA-2004w,

HUD-9516, HUD-9516A, HUD-9519,

HUD-9520, HUD-9551, and HUD-9556

Frequency of submission: On Occasion

Affected public: Individuals or
Households, Businesses or Other For-
Profit, Small Businesses or
Organizations

Estimated burden hours: 143,050

Status: New

Contact: Freeman Grote, HUD, (202)
755-5740; Robert Neal, OMB, (202)
395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Property Disposition
Handbook—Multifamily Properties**

Office: Housing

Form Number: HUD Handbook 4315.1

Frequency of submission: On Occasion

Affected public: Individuals or
Households, Businesses or Other For-
Profit, Small Businesses or
Organizations

Estimated burden hours: 9,412

Status: Revision

Contact: Richard Harrington, HUD, (202)
755-7357; Robert Neal, OMB, (202)
395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Property Disposition
Handbook—Contracting**

Office: Housing

Form Number: HUD Handbook 4320.1

Frequency of submission: On Occasion

Affected public: Individuals or
Households, Businesses or Other For-
Profit, Small Businesses or
Organizations

Estimated burden hours: 37,310

Status: Revision

Contact: William Novack, HUD, (202)
426-3970; Robert Neal, OMB, (202)
395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

Proposal: Outline Specifications

Office: Public and Indian Housing

Form Number: HUD-5087

Frequency of submission: On Occasion

Affected public: State or Local
Governments and Non-Profit
Institutions

Estimated burden hours: 4,329

Status: New

Contact: Raymond W. Hamilton, HUD,
(202) 426-0938; Robert Neal, OMB,
(202) 395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

Proposal: Turnkey Contract of Sale

Office: Public and Indian Housing

Form Number: HUD-53015

Frequency of submission: On Occasion

Affected public: State or Local
Governments and Non-Profit
Institutions

Estimated burden hours: 529

Status: New

Contact: Raymond W. Hamilton, HUD,
(202) 426-0938; Robert Neal, OMB,
(202) 395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

Proposal: Instructions to Bidders

Office: Public and Indian Housing

Form Number: HUD-5369

Frequency of submission: On Occasion

Affected public: State or Local
Governments and Non-Profit
Institutions

Estimated burden hours: 118

Status: New

Contact: Raymond W. Hamilton, HUD,
(202) 426-0938; Robert Neal, OMB,
(202) 395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

Proposal: General Conditions

Office: Public and Indian Housing

Form Number: HUD-5370

Frequency of submission: On Occasion

Affected public: State or Local
Governments and Non-Profit
Institutions

Estimated burden hours: 118

Status: New

Contact: Raymond W. Hamilton, HUD,
(202) 426-0938; Robert Neal, OMB,
(202) 395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

Proposal: Notice to Proceed

Office: Public and Indian Housing

Form Number: None

Frequency of submission: On Occasion

Affected public: State or Local
Governments and Non-Profit
Institutions

Estimated burden hours: 90

Status: New

Contact: Raymond W. Hamilton, HUD,
(202) 426-0938; Robert Neal, OMB,
(202) 395-7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Manufactured Mobile Home
Warranty**

Office: Housing

Form Number: HUD-55014

Frequency of submission: On Occasion

Affected public: Individuals or
Household, Businesses or Other For-
Profit, and Small Businesses or
Organizations

Estimated burden hours: 8,961

Status: New

Contact: James L. Anderson, HUD (202)
755-6880; Robert Neal, OMB, (202) 395-
7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Background Data on Request
for Assignment of Mortgage to HUD**

Office: Housing

Form Number: HUD-92206

Frequency of submission: On Occasion

Affected public: Businesses or Other
For-Profit and Federal Agencies or
Employees

Estimated burden hours: 15,000

Status: Extension

Contact: Ann M. Sudduth, HUD, (202)
755-6772; Robert Neal, OMB, (202) 395-
7316

Authority: Sec. 3507 of the Paperwork
Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the
Department of Housing and Urban
Development Act, 42 U.S.C. 3535(d).

**Proposal: Request for Credit Approval of
Substitute Mortgages**

Office: Housing

Form Number: HUD-2210

Frequency of submission: On Occasion

Affected public: Individuals or
Households

Estimated burden hours: 1,000

Status: Revision

Contact: Ruth H. Studer, HUD, (202) 755-
6720; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Schedule of Properties
Securing Blanket Mortgage Loan

Office: Housing

Form Number: HUD-92461

Frequency of submission: On Occasion

Affected public: Non-Profit Institutions

Estimated burden hours: 500

Status: Extension

Contact: Kerry J. Mulholland, HUD, (202) 426-0730 Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Commitment to Guarantee
Mortgage-Backed Securities

Office: Government National Mortgage Association

Form Number: HUD-11704

Frequency of submission: On Occasion

Affected public: Businesses or Other For-Profit

Estimated burden hours: 3,000

Status: Extension

Contact: Patricia Gifford, HUD, (202) 755-5550, Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Request for Release of
Documents and Establishment of
Various Custodial Relationships

Office: Government National Mortgage Association

Form Number: HUD-11708, HUD-11709, HUD-11709A, HUD-11711A, HUD-11711B, HUD-11715, and HUD-11720

Frequency of submission: On Occasion

Affected public: Businesses or Other For-Profit

Estimated burden hours: 7,295

Status: New

Contact: Patricia Gifford, HUD, (202) 755-5550, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Agreement Between Owner
and Architect

Office: Public and Indian Housing

Form Number: HUD-51915

Frequency of submission: On Occasion

Affected public: State or Local Governments and Non-Profit Institutions

Estimated burden hours: 589

Status: New

Contact: Raymond W. Hamilton, HUD, (202) 426-0938, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Memorandum of Acceptance
for Occupancy (MAO)

Office: Public and Indian Housing

Form Number: None

Frequency of submission: On Occasion

Affected public: State or Local Governments and Non-Profit Institutions

Estimated burden hours: 118

Status: New

Contact: Raymond W. Hamilton, HUD (202) 426-0938, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Certificate from Contractor
Appointing Officer or Employee to
Supervise Payment of Employees

Office: Public and Indian Housing

Form Number: HUD-5282

Frequency of submission: On Occasion

Affected public: State or Local Governments and Non-Profit Institutions

Estimated burden hours: 1,960

Status: New

Contact: Raymond W. Hamilton, HUD, (202) 426-0938, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Agreement for Storing
Materials Off-Site

Office: Public and Indian Housing

Form Number: None

Frequency of submission: On Occasion

Affected public: Individuals or Households and Non-Profit Institutions

Estimated burden hours: 157

Status: New

Contact: Raymond W. Hamilton, HUD, (202) 426-0938, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Placement Certificate for
Manufactured (Mobile) Home

Office: Housing

Form Number: HUD-56002 (MH)

Frequency of submission: On Occasion

Affected public: Individuals or Households, Businesses or Other For-Profit, Small Businesses or Organizations

Estimated burden hours: 8,961

Status: New

Contact: James L. Anderson, HUD, (202) 755-6880, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Form of Certificate of
Completion-Consolidated

Office: Public and Indian Housing

Form Number: None

Frequency of submission: On Occasion

Affected public: State or Local Governments and Non-Profit Institutions

Estimated burden hours: 686

Status: New

Contact: Raymond W. Hamilton, HUD, (202) 426-0938, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Format: Sample Change Order

Office: Public and Indian Housing

Form Number: None

Frequency of submission: On Occasion

Affected public: State or Local Governments and Non-Profit Institutions

Estimated burden hours: 8,330

Status: New

Contact: Raymond W. Hamilton, HUD, (202) 426-0938, Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 7, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-34443 Filed 12-28-83; 8:45 am]

BILLING CODE 4210-01-M

Government National Mortgage Association

[Docket No. N-83-1319-FR-1849]

List of GNMA Attorneys-in-Fact

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs. These

appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: John Maxim, Associate General Counsel, Insured Housing and Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-6274. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

Until recently, lists of persons appointed to act have appeared in the Code of Federal Regulations (see 24 CFR 300.11 (c) and (d), 1983 edition). In related documents published on August 12, 1983 (see 48 FR 36572, 36573) GNMA announced that it was removing these lists from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the lists from the CFR, as well as the complete list of attorneys-in-fact, was effective on October 11, 1983.

This notice today announces changes to the list of persons published August 12, 1983 who are authorized to act as attorneys-in-fact.

Accordingly, the following changes are made to list II, staff members of the Federal Home Loan Mortgage Corporation, appointed attorneys-in-fact:

1. Remove from the list the following persons:

Name and Region

William J. Burdine, Washington, D.C.
David G. Herold, Washington, D.C.
Louis C. Paretti, Washington, D.C.

2. Add to the list the following persons:

Name and Region

George E. Delgado, Arlington, VA
James L. Garrison, Arlington, VA
Peter R. McNulty, Arlington, VA
F. Michael Salb, Arlington, VA

Dated: December 19, 1983.

Robert P. Kalish,

Acting Executive Vice President.

[FR Doc. 83-34445 Filed 12-29-83; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bois Forte (Nett Lake) Reservation; Plan for Use of the Twenty (20) Percent Program Portion of Judgment Funds Awarded to Bois Forte (Nett Lake) Reservation Group, Mississippi and Lake Superior Chippewa Indians in Dockets 18-C and 18-T

December 16, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

A plan for the use of certain judgment funds of the Bois Forte (Nett Lake) Reservation group of the Mississippi and Lake Superior Chippewa Indians, pursuant to the provisions of the Act of October 19, 1973, 87 Stat. 466, as amended, became effective on February 1, 1979. Under the plan, twenty (20) percent of the group's share of the judgment funds awarded in Docket 18-C and 18-T was set aside for the program aspect of the plan to be developed at a later date. Plan for the use of the program funds of the Bois Forte (Nett Lake) Reservation group was submitted to the Congress by a letter dated July 29, 1983, and was received (as recorded in the Congressional Record) by the House of Representatives on August 3, 1983, and by the Senate on August 4, 1983. Since the plan lay before Congress, as provided in the Secretarial Plan of February 1, 1979, for thirty days without disapproval action being taken by Congress, the plan became effective on October 20, 1983.

The plan reads as follows:

"The program aspect of the plan of the Nett Lake (Bois Forte) Reservation group, pursuant to the Act of October 19, 1973, 87 Stat. 466, which became effective February 1, 1979, provides that the twenty (20) percent program portion of the group's share of the judgment funds awarded to the Mississippi and Lake Superior Chippewa Bands in Dockets Nos. 18-C and 18-T shall be programmed as follows:

The twenty percent (20%) program portion of the funds, including interest and investment income accrued, of the groups named in section 5 of this plan shall be deposited in separate accounts and shall be invested by the Secretary under 25 U.S.C. 162a until such time as a further plan for the use of the program funds is approved by the Secretary. The Secretary shall approve no plan for the use of the program funds of the respective groups until at least thirty days after the plan has been submitted to the Congress. The Reservation Business Committees of the Minnesota Chippewa Tribe and their respective band members

represented on the reservations shall develop program plans, which may include a joint investment and use program of the funds for the bands represented on a reservation.

"In accordance with Resolution No. 73-83, adopted January 19, 1983, by the Nett Lake Reservation Business Committee, the twenty percent program funds shall be utilized in a Reservation Business Capitalization Program, with such funds apportioned among three specific programs. (1) Capital investment to assist reservation owned enterprises in expansion development (35%); (2) Loan fund to assist the existing tribally owned businesses on a day to day basis (35%); (3) Loan guarantee funds to support tribally owned businesses conventional loan packages and bonding programs (30%). There shall be established three separate program accounts for these purposes, and until such time the funds are needed in the implementation of the program plans, the funds shall continue to be invested by the Secretary of the Interior pursuant to 25 U.S.C. 162a. The Nett Lake Reservation Business Committee shall be required to develop specific program plans for the use of the funds and tribal budgets, which shall be subject to approval by the Secretary.

"Should funds set aside in any of the program accounts be determined to be in excess of needs of the program, appropriate adjustments from one program account to another shall be made in the annual tribal budget, with the approval of the Secretary.

"General Provision None of the funds made available under this plan shall be subject to Federal, State or local income taxes or be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of \$2,000, any Federal or federally assisted program."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-34414 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-02-M

Keweenaw Bay Indian Community; Plan for Use and Distribution of Keweenaw Bay Indian Community Judgment Funds in Docket 18-C and 18-T

December 16, 1983.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

A plan for the use of certain judgment funds of the Keweenaw Bay Community Band of the Mississippi and Lake Superior Chippewa Indians, pursuant to the provisions of the Act of October 19, 1973, 87 Stat. 466, as amended, became effective on February 1, 1979. Under the plan, the Keweenaw Bay Community Band's share of the judgment funds awarded in Dockets 18-C and 18-T was held and invested by the Secretary of the Interior under 25 U.S.C. 162a until such time as a plan for the Band's use and distribution of the funds was prepared in accordance with the provisions of the Act of October 19, 1973, 87 Stat. 466. A plan for the use and distribution of the judgment funds was submitted to the Congress by a letter dated June 14, 1983, and was received (as recorded in the Congressional Record) by the House of Representatives on June 20, 1983, and by the Senate on June 21, 1983. The plan became effective on October 17, 1983, as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

"The judgment funds in Dockets Nos. 18-C and 18-T, including the interest and investment income accruing thereon, apportioned to the Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert and Ontonagon Bands of Lake Superior Chippewa Indians), of Michigan, pursuant to section 3 of the plan which became effective February 1, 1979 (published in the Federal Register March 14, 1979, 44 FR 15541), and validated by an Act of February 21, 1980, 94 Stat. 61, and being held and invested by the Secretary of the Interior (hereinafter "Secretary"), shall be used and distributed as provided herein.

Per Capita Aspect

"The Secretary shall make a per capita distribution of fifty (50) percent of such funds, including all interest and investment income accrued, in a sum as equal as possible, to each enrollee of the Keweenaw Bay Indian Community born on or prior to and living on the effective date of this plan, and who meets the membership requirements of the Constitution and By-laws, approved by the Secretary on December 17, 1936, and tribal adoptions ordinance, approved by the Secretary on April 4, 1940. The membership roll of the tribe shall be brought current under existing tribal procedures. Any amount remaining after the per capita payment to the enrollees shall revert to the tribe for use in the programing aspect of this plan.

Programing Aspect

"The fifty (50) percent program funds, including the interest and investment income accrued, shall continue to be held and invested by the Secretary under 25 U.S.C. 162a until the tribal governing body develops specific program plans and tribal budgets for social and economic development programs and governmental operations, which shall be subject to approval by the Secretary.

General Provisions

"No person shall be entitled to more than one per capita share of the funds in his/her own right. The per capita shares of competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, by Pub. L. 97-458.

"None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of \$2,000, any Federal or federally assisted programs."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-34415 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[INT DEIS 83-70; U-060]

Sunnyside Combined Hydrocarbon Lease Conversion; Extension of Comment Period on Draft Environmental Impact Statement

December 23, 1983.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period on draft EIS.

SUMMARY: The public comment period on the draft Sunnyside Hydrocarbon Lease Conversion EIS was published in the Federal Register on November 1, 1983 (48 FR 50418), with a 60-day comment period ending on January 6,

1984. In response to requests that the comment period be extended, notice is hereby given that the comment period is reopened for an additional 30-day period.

DATE: The comment period is extended to February 6, 1984. Comments received by this date will be considered in the Final EIS and in the decision making process.

ADDRESS: Comments should be sent to: Gene Nodine, District Manager, Moab District, Bureau of Land Management, 125 West 200 South, P.O. Box 970, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Robert E. Pizel, Project Leader, EIS Services, Bureau of Land Management, 555 Zang Street, First Floor East, Denver, Colorado 80228, (303) 324-8737.

Gene Nodine,
District Manager.

[FR Doc. 83-34593 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-84-M

Proposed Geothermal Lease Form Revision

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of proposed Geothermal Lease Form.

SUMMARY: In an effort to streamline procedures, reduce paperwork, contain costs, and facilitate lease processing, the Bureau proposes and publishes herewith a revised geothermal lease form.

DATE: Comments on the proposed lease form should be submitted by January 30, 1984. Comments received or postmarked after the above date may not be considered in the final decisionmaking process.

ADDRESS: Comments should be sent to and copies of the proposed form may be obtained from: Director (620), Bureau of Land Management, 1800 C Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Karl F. Duscher (202) 653-2187 or Timothy Foley (202) 653-2236.

SUPPLEMENTARY INFORMATION: This notice requests written comments on a revised geothermal lease form. The proposed form replaces two existing forms. The form will be used as both the lease application and the lease contract itself. The instructions for completion of the form will be included as a tearoff, but for purposes of this notice are separately typed following the form.

In proposing this revised form, it is the Bureau's intent to not change the rights that have traditionally been granted in

the standard lease form, or to modify the rights reserved to the Government in any way. Comments are particularly requested from parties believing that the new form would affect rights granted or rights reserved.

The proposed form and instructions for completion follow.

Dated: December 22, 1983.

Arnold E. Petty,

Acting Associate Director.

BILLING CODE 4310-84-M

Form 3200-8 Revised
(March 1983)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OBM NO. ~~100-1025~~

OFFER TO LEASE AND LEASE FOR GEOTHERMAL RESOURCES

Serial No. _____

The undersigned (see reverse) offers to lease all or any of the lands in item 2 that are available for lease pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

Read Instructions Before Completing

1. Name _____
 Street _____
 City, State, Zip Code _____

2. Surface managing agency if other than BLM _____ Unit/Project _____
 Legal description of land requested:
 T. _____ R. _____ Meridian _____ State _____ Country _____

Amount returned: Filing fee \$ _____ Rental fee \$ _____ Total \$ _____
 Total acres applied for _____
 Percent U.S. interest _____

DO NOT WRITE BELOW THIS LINE

3. Land included in lease:
 T. _____ R. _____ Meridian _____ State _____ Country _____

Total acres in lease _____
 Rental retained \$ _____

In accordance with the above offer, or the previously submitted competitive bid, this lease is issued for a period of 10 years, subject to renewal or extension in accordance with the authorizing Act, granting the exclusive right to develop and utilize geothermal resources in the lands described in item 3 together with the right to build and maintain necessary improvements thereupon, and the right to convert this lease to a mineral lease or to locate mineral deposits as provided for in the Act. Rights granted are subject to applicable laws, the terms, conditions, and attached stipulations of this lease, regulations and formal orders in effect as of lease issuance and, when not inconsistent with specific provisions of this lease, regulations and formal orders hereafter promulgated.

THE UNITED STATES OF AMERICA

Type of lease:
 Noncompetitive
 Competitive
 Other _____

by _____ (Signing Officer)
 _____ (Title) _____ (Date)

EFFECTIVE DATE OF LEASE _____

Year	Year	Year
Instructions		
<p>A. General</p> <p>1. The front of this form is to be completed only by parties filing for a noncompetitive lease. The BLM will complete front of form for all other types of leases.</p> <p>2. Entries must be typed or printed plainly in ink. Offeror must sign form (item 4) in ink.</p> <p>3. An original and two copies of this offer must be prepared and filed in the proper BLM State office. See regulations at 43 CFR 1821.2-1 for office locations.</p> <p>4. If more space is needed, additional sheets must be attached on each copy of the form submitted.</p> <p>B. Special:</p> <p>Item 1--Enter offeror name and billing address</p> <p>Item 2--Indicate the agency controlling the surface use of the land and the unit or project</p>	<p>of which the land is a part. Offeror may also provide other information that will assist in establishing title for minerals. The description of land must conform to 43 CFR 3203.4. Area must not exceed that allowed by regulations.</p> <p>Payments: The amount returned must include the filing fee and the first year's rental at the rate of \$1 per acre or fraction thereof. The full rental based on the total acreage applied for must accompany an offer even if the mineral interest of the United States is less than 100 percent. The filing fee will be retained as a service charge even if the offer is completely rejected or withdrawn. To protect priority, it is important that the rental submitted be sufficient to cover all the land requested. If the land requested includes lots or irregular quarter-quarter sections, the exact area of which is not known to the offeror, rental should be submitted on the basis of each such lot or quarter-quarter section containing 40 acres. If the offer is withdrawn or rejected in whole or in part before a lease issues, the rental returned for the parts withdrawn or rejected will be returned.</p> <p>Item 3--This space will be completed by the United States</p>	
Year	Year	Year

4. (a) Undersigned certifies that:
- (1) Offeror is a citizen of the United States, an association of such citizens, a municipality, or a corporation organized under the laws of the United States, any State or the District of Columbia;
 - (2) All parties holding an interest in the offer are in compliance with 43 CFR 3200 and the authorizing Act;
 - (3) Offeror's chargeable interests, direct and indirect, do not exceed that allowed under the Act; and
 - (4) Offeror is not considered a minor under the laws of the State in which the lands covered by this offer are located.
- (b) Undersigned agrees that signature to this offer constitutes acceptance of this lease, including all terms, conditions and stipulations of which offeror has been given notice, and any amendment or separate lease that may cover any land described in this offer open to lease application at the time this offer was filed but omitted for any reason from this lease. The offeror further agrees that this offer cannot be withdrawn, either in whole or part, unless the withdrawal is received by the BLM State Office before this lease, an amendment to this lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

This offer will be rejected and will afford the offeror no priority if it is not properly completed and enclosed in accordance with the regulations, or if it is not accompanied by the required payments. Title 18 U.S.C. Sec. 1001 makes it a crime for any person knowingly and willfully to make to any Department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Duly executed this _____ day of _____, 19 _____

(Signature of Lessee or Attorney-in-Fact)

LEASE TERMS

Sec. 1. **Rentals**—Rentals shall be paid to proper office of lessor in advance of each lease year until there is production in commercial quantities from the leased lands. Annual rental rates per acre or fraction thereof are: \$1 for noncompetitive leases and \$2 for competitive leases.

If this lease or a portion thereof is committed to an approved cooperative or unit plan which includes a well capable of producing leased resources, and the plan contains a provision for allocation of production, royalties shall be paid on the production allocated to this lease. However, annual rentals shall continue to be due for those lands not within a participating area.

Failure to pay annual rental, if due, on or before the anniversary date of this lease (or next official working day if office is closed) shall automatically terminate this lease by operation of law except as provided by 43 CFR 3244.2. Rentals may be suspended by the Secretary upon a sufficient showing by lessee.

Sec. 2. **Royalties**—Royalties shall be paid to proper office of lessor. Royalties shall be computed in accordance with regulations and orders. Royalty rates on production are: 10 percent for steam, heat, or energy; 5 percent for byproducts; and 5 percent for demineralized water.

Lessor reserves the right to establish reasonable minimum values on production after giving lessee notice and an opportunity to be heard. Royalties shall be due and payable on the last day of the month following the month in which production occurred.

A minimum royalty of \$2 per acre or fraction thereof shall be due at the expiration of each lease year commencing with the lease year beginning on or after the commencement of production in commercial quantities. This minimum royalty may be waived, suspended, or reduced, and the above royalty rates may be reduced for all or portions of this lease if the Secretary determines that such action is necessary to encourage the greatest ultimate recovery of the leased resources, or is otherwise justified.

Sec. 3. **Bonds**—Lessee shall file and maintain any bond required under regulations.

Sec. 4. **Diligence, rate of development, utilization, and drainage**—Lessee shall perform diligent exploration as required by regulations and shall prevent unnecessary damage to, loss of, or waste of leased resources. Lessor reserves right to specify rates of development and production in the public interest and to require lessee to subscribe to a cooperative development plan, within 30 days of notice, if deemed necessary for proper development and operation of the area, field, or pool embracing these leased lands. Lessee shall drill and produce wells necessary to protect leased lands from drainage or pay compensatory royalty for drainage in amount determined by lessee.

Sec. 5. **Documents, evidence, and inspection**—Lessee shall file with proper office of lessor, not later than (30) days after effective date thereof, any contact or evidence of other arrangement for the sale or disposal of production. At such times and in such form as lessor may prescribe, lessee shall furnish detailed statements showing amounts and quality of all products removed and sold, proceeds therefrom, and amount used for production purposes or unavoidably lost. Lessee may be required to provide plans and schematic diagrams showing development work and improvements on the leased lands, and reports with respect to peruses in interest, expenditures, and depreciation costs.

Lessee shall keep a daily drilling record, a log, and complete information on well surveys and tests in the form prescribed by lessor for all wells drilled on the leased lands. Lessee shall keep a record of subsurface investigations and furnish copies to lessor when required. Lessee shall keep open at all reasonable times for inspection by any authorized officer of lessor, the leased premises and all wells, improvements, machinery, and fixtures thereon, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or in the leased lands. Lessee shall maintain copies of all contracts, sales agreements, accounting records, and documentation such as billings, invoices, or similar documentation that supports costs claimed as manufacturing, preparation, and/or transportation costs. All such records shall be maintained in lessee's accounting offices for future audit by lessor. Lessee shall maintain required records for 6 years after they are generated or, if an audit or investigation is underway, until released of the obligation to maintain such records by lessor.

During existence of this lease, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 6. **Conduct of operations**—Lessee shall conduct operations in a manner that prevents unnecessary impacts and minimizes other impacts to the land, air, and water, to cultural, biological, visual, and other resources, and to other land uses or users. Lessee shall take reasonable measures deemed necessary by lessor to accomplish the intent of this section. To the extent consistent with leased rights granted, such measures may include, but are not limited

to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. Lessor reserves the right to continue existing uses and to authorize future uses upon or in the leased lands, including the approval of easements or rights-of-ways. Such uses shall be conditioned so as to prevent unnecessary or unreasonable interference with rights of lessees.

Prior to disturbing the surface of the leased lands, lessee shall contact lessor to be apprised of procedures to be followed and modifications or reclamation measures that may be necessary. Areas to be disturbed may require minor inventories or short term special studies to determine the extent of impacts to other resources. Lessee may be required to complete such under guidelines provided by lessor. If in the conduct of operations, threatened or endangered species, objects of historic or scientific interest, or substantial unanticipated environmental effects are observed, lessee shall immediately contact lessor.

Sec. 7. **Production of byproducts**—If the production, use, or conversion of geothermal resources from these leased lands is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water for beneficial uses in accordance with applicable State water laws, lessor may require substantial beneficial production or use thereof by lessee.

Sec. 8. **Damages to property**—Lessee shall pay lessor for damage to lessor's improvements and shall save and hold lessor harmless from all claims for damage or harm to persons or property as a result of lease operations.

Sec. 9. **Protection of diverse interests and equal opportunity**—Lessee shall pay when due all taxes legally assessed and levied under laws of the State or the United States, accord all employees complete freedom of purchase, pay all wages at least twice each month at lawful money of the United States, maintain a safe working environment in accordance with standard industry practices, and take measures necessary to protect the health and safety of the public. Lessor reserves the right to ensure that production is sold at reasonable prices and to prevent monopoly.

Lessee shall comply with the provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant thereto. Neither lessee nor lessor's subcontractor shall maintain segregated facilities.

Sec. 10. **Transfer of lease interests and relinquishment of lease**—Lessee shall file for approval or recording in the proper office of lessor any instrument transferring, within the limits established by regulations, a record title, operating, working or royalty interest in this lease.

The lessee may relinquish this lease or any legal subdivision within the limits established by regulations, by filing in the proper BLM office a written relinquishment, which shall be effective as of the date of filing subject to the continued obligation of the lessee and surety to pay all accrued rentals and royalties.

Sec. 11. **Delivery of premises**—At such time as all or portions of this lease are returned to lessor, lessee shall place all wells in condition for suspension or abandonment and, within a reasonable period of time, remove equipment and improvements not deemed necessary in lessor for preservation of producible wells or continued protection of the environment.

Sec. 12. **Proceedings in case of default**—If lessee fails to comply with any provisions of this lease, and the noncompliance continues for 30-days after written notice thereof, this lease shall be subject to cancellation. However, if this lease includes land known to contain a well capable of production in commercial quantities, it may be cancelled only by judicial proceedings. This provision shall not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Whenever the lessee fails to comply in a timely manner with any of the provisions of the Act, this lease, the regulations, or of any GRO Orders or other orders, and immediate action is required, the Lessor may enter on the leased lands and take measures deemed necessary to correct the failure at the expense of the Lessee.

Sec. 13. **Heirs and successors-in-interest**—Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

[Group 852; 4-19952-I-LM-CA]

California; Filing of Plat of Survey

December 19, 1983.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, San Bernardino County

T. 29 S., R. 41 E.,

2. This plat, representing the metes-and-bounds survey of lot 9, situated in the SE ¼ of Section 31, T. 29S., R. 41 E., Mount Diablo Meridian under Group No. 852, California, was accepted November 15, 1983.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2941, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 83-34561 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-84-M

[M-55762(SD)]

Realty Action; Competitive Sale of Public Land in Perkins County, South Dakota; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Amendment: In Federal Register Page No. 50174 published October 31, 1983, as amended on Page No. 53606 on November 28, 1983, paragraph under subtitle Bid Standards under paragraph titled SUPPLEMENTARY INFORMATION to reflect the following:

No bid will be accepted for less than the appraised fair market value of \$4,000. Submitted bids must be accompanied by a certified check, postal money order, bank draft or cashier's check of not less than 30% of the amount bid. The remainder of the amount bid is payable within 180 days of the sale date.

All other details of the competitive sale will remain the same as described in the Federal Register.

Dated: December 19, 1983.

Ray Brubaker,

District Manager.

[FR Doc. 83-34564 Filed 12-28-83; 8:43 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service**Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Fourth Regular Meeting**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces the availability of the official report of the U.S. Representative to the Fourth Regular Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

ADDRESS: Copies of the official report may be requested from the U.S. Fish and Wildlife Service (WFO), Washington, D.C. 20240. Due to a limited supply, requests should be limited to one copy per person or organization.

FOR FURTHER INFORMATION CONTACT: Thomas J. Parisot, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235-2418.

SUPPLEMENTARY INFORMATION: In accordance with the Service's rules for public participation in the development of negotiating positions for meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Service announces the availability of the official report of the U.S. Representative to the Fourth Regular Meeting of the Conference of the Parties held in Gaborone, Botswana, April 19-30, 1983, which includes a report on the Second Extraordinary Meeting held on the last day of the meeting to decide whether or not to amend CITES to allow regional economic integration organizations to become parties to the Convention.

Due to a limited supply of the report, requests should be limited to one copy per person or organization.

This notice was prepared by Arthur W. Lazarowitz, Federal Wildlife Permit Office.

Dated: December 20, 1983.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 83-34557 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-07-M

Endangered Species Permit; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

APP# 584109

Applicant: James C. Gillingham, Mt Pleasant, MI.

The applicant requests a permit to take (capture, tag, release) specimens of the Puerto Rican boa (*Epicrates inornatus*) for scientific research or enhancement of survival of the species.

PRT 2-11347

Co-applicants: International Animal Exchange, Ferndale, MI, White Oak Plantation/Gilman Paper Co., Yulee, FL.

The applicants request a permit to import three male captive-born cheetahs (*Acinonyx jubatus*) from Dierenpark Amersfoort, The Netherlands for enhancement of propagation and survival.

APP# 583647

Applicant: Arthur T. Leitheuser, Mammoth Cave, KY.

The applicant requests a permit to take (collect, capture and release) live specimens of the Kentucky cave shrimp (*Palaemonias ganteri*) for scientific research.

APP# 583849

Applicant: Northland Wildlife, Bovey, MN.

The applicant requests a permit to import one captive-born female ringtailed lemur (*Lemur catta*) and a pair of captive-born black lemurs (*Lemur macacao*) from Metro Toronto Zoo for enhancement of propagation and survival.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WFO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: December 22, 1983.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-34559 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-07-M

Minerals Management Service**Information Collection Submitted for Review**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related materials may be obtained by contacting Terry Van Houten at (703) 860-6461. Comments and suggestions on the collection of information should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, Washington, D.C. 20503; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; U.S. Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 7, "Pollution Prevention and Control."

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Federal oil and gas lessees offshore, performing operations under OCS Order No. 7, "Pollution Prevention and Control."

Annual Responses: 1,340.

Annual Burden Hours: 14,740.

Dated: December 9, 1983.

Price McDonald,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 83-34983 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service**Intention To Negotiate Concession Contract; Benz Corp.**

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with The Benz Corporation, authorizing it to continue to provide lodging facilities and services for the public at Cape Cod National Seashore for a period of ten (10) years from January 1, 1984, through December 31, 1993.

This contract renewal has been determined to be categorically excluded

from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1983, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision in effect, grants The Benz Corporation, the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by The Benz Corporation. If The Benz Corporation amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with The Benz Corporation.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, National Park Service, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed contract.

Dated: November 30, 1983.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region, National Park Service.

[FR Doc. 83-34467 Filed 12-28-83; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contracts and Permits

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, 79 Stat. 969; 16 U.S.C. 20, public notice is hereby given that approximately thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate concession permits to provide canoe rental, johnboat rides, and other incidental services for the public at Ozark National Scenic Riverways, Missouri, for a period of approximately four and one-half (4½) years from April 1, 1984, through October 31, 1988.

Along with the foregoing, the National Park Service also proposes to negotiate two (2) concession contracts to provide canoe rental, fuel, camping items, gifts

and grocery services and other incidental services for the public at Ozark National Scenic Riverways, Missouri, for a period of approximately seven (7) years from Date of Execution of the contract, through December 31, 1990.

There are currently 2 concession contracts and 15 concession permits authorized by National Park Service to provide canoe rental johnboat rides, and incidental services at Ozark National Scenic Riverways. These contracts and permits will expire on December 31, 1983.

Under the Act of October 9, 1965, as cited above, the existing National Park Service concessioners who have performed their obligation to the satisfaction of the Secretary under existing contracts or permits are entitled to be given preference in the renewal of their contract or permit, and in the negotiation of a new contract or permit. Since the existing National Park Service concessioners at Ozark National Scenic Riverways have performed their obligation to the satisfaction of the Secretary, it was the National Park Service's intention to grant such preference in the renewal of new contracts and permits. However, the United States Eighth Circuit Court of Appeals in an opinion dated July 11, 1983, in the case of *Free Enterprise Canoe Renters Association of Missouri v. James Watt, Secretary of Interior, et al.*, C.A. Nos. 82-2246 and 82-2304, directed that when current authorizations expire, other potential concessioners are to be able to compete with existing concessioners "on an equal footing."

Therefore, the National Park Service is seeking qualified concession operators in accordance with the Court of Appeals decision. The decision does not affect the concession known as the Big Spring Johnboat Concession for which preferential right will be honored.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it is not a major Federal action having significant impact on the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(3) of the National Environmental Policy Act of 1969 is required. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Park Superintendent, Ozark National Scenic Riverways, Van Buren, Missouri.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must

be received on or before January 31, 1984, to be considered and evaluated.

Interested parties should contact the Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965, telephone (314) 323-4236, or the Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221-3431, for a copy of the prospectus for these contracts and permits which discuss terms, conditions and criteria under which they will be awarded.

Dated: December 29, 1983.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 83-34442 Filed 12-29-83; 9:45 am]

BILLING CODE 4310-70-M

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 8:30 a.m. (EST), on Thursday, January 26, 1984, at the Happy Days Visitor Center located on West Streetsboro Road, 1 mile west of Route 8 in Peninsula, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 18 U.S.C. 460ff-4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. C. W. Eliot Paine
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. R. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matters to be discussed at this meeting include:

1. Status of the Land Protection Plan.
2. Cuyahoga Valley Transportation Plan.

The meeting will be open to the public. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio, 44141, telephone (216) 526-5256. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the Office of Cuyahoga Valley National Recreation Area, located at 15610 Vaughn Road, Brecksville, Ohio 44141.

Dated: December 16, 1983.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 83-34441 Filed 12-28-83; 9:45 am]

BILLING CODE 4310-70-M

Southwest Regional Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Southwest Regional Advisory Committee will be held at 9:00 a.m., on January 13, 1984, in the Southwest Regional Office Conference Room located at 110 Old Santa Fe Trail, Santa Fe, New Mexico.

The Southwest Regional Advisory Committee was established pursuant to Pub. L. 91-383, Section 9(a)(2), to advise the Regional Director, Southwest Region, National Park Service, on programs, policies, and such other matters as may be referred to it by the Regional Director. The committee also functions to provide closer communication with the public on such matters.

The members of the Southwest Regional Advisory Committee are:

Mr. John D. Kennedy, Gallup, New Mexico (Chairman)
Mrs. Barbara June Coe, Dallas, Texas
Mr. John L. White, Houston, Texas
Mr. Charles E. Ford, Tulsa, Oklahoma

The purpose of the meeting is for orientation to the Southwest Region.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Regional Director, Southwest Region.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert I. Kerr, Regional Director, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87501, telephone area code 505 988-6388. Minutes of the meeting will be available for public inspection four weeks after the meeting

at the office of the Regional Director, Southwest Region.

Dated: December 20, 1983.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 83-34468 Filed 12-20-83; 9:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than (ten days after publication). Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Ms. Melita E. Yearwood, (202) 632-3378, IRM/MMP, Room 708B, SA-12, Washington, D.C. 20523.

Date Submitted: December 14, 1983

Submitting Agency: Agency for

International Development

OMB Number: 0412-0001

Form Number: AID 1550-8 and AID 1550-9

Type of Submission: Extension

Title: Schedule D, Part I, Overseas Transport—Supplies To Be Shipped and Schedule D, Part II, Overseas Transport—Estimated of Freight Cost, Value and Volume

Purpose: Parts I and II of Schedule D are monitoring documents used in the Ocean Freight Program which reimburses Private and Voluntary Organizations for shipping donated goods to their programs overseas. Part I lists the kinds of commodities to be shipped and the countries that will receive shipments. Part II indicates estimated requirements for Ocean Freight funds.

Date Submitted: December 14, 1983

Submitting Agency: Agency for

International Development

OMB Number: NA

Form Number: None

Type of Submission: New

Title: AID Regulation 2, Overseas Shipments of Supplies by Voluntary Non-Profit Relief Agencies

Purpose: AID Regulation 2 informs Private and Voluntary Organizations

registered with AID how to apply for benefits under the Agency's Ocean Freight Reimbursement program. It also collects information to enable AID to determine which of those organizations choosing to apply actually meet program requirements. Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: December 14, 1983.

Richard F. Calhoun,

Chief, Mandated Management Programs.

[FR Doc. 83-34560 Filed 12-28-83; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-203 (Preliminary) and 731-TA-152 (Preliminary)]

Pads for Woodwind Instrument Keys from Italy

Determinations

On the basis of the record¹ developed in investigations Nos. 701-TA-203 (Preliminary) and 731-TA-152 (Preliminary), the Commission determines, pursuant to sections 703(a) and 733(a), respectively, of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Italy of pads for woodwind instrument keys, provided for in item 726.70 of the Tariff Schedules of the United States which are allegedly subsidized by the Government of Italy and are also allegedly sold in the United States at less than fair value (LTFV).²

Background

On November 7, 1983, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce on behalf of Prestini Musical Instruments Corp., Nogales, Ariz., alleging that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Italy of pads for woodwind instrument keys which are allegedly being subsidized by the Government of Italy and are also allegedly being sold in the United States at LTFV. Accordingly, the Commission

instituted preliminary investigations under sections 703(a) and 733(a) of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded,³ by reason of imports of such merchandise into the United States.

Notice of the institution of the Commission investigations and the conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the *Federal Register* on November 16, 1983 (48 FR 52135). The conference was held in Washington, D.C. on November 30, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission's determinations in these investigations were made in an open "Government in the Sunshine" meeting held on December 14, 1983.

The Commission transmitted its report on these investigations to the Secretary of Commerce on December 21, 1983. A public version of the Commission's report, Pads for Woodwind Instrument Keys from Italy (investigation Nos. 701-TA-203 (Preliminary) and 731-TA-152 (Preliminary)), USITC Publication 1466, contains the views of the Commission and information developed during the investigations.

By Order of The Commission.

Issued: December 22, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-34514 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02

[332-172]

Changes in the U.S. Telecommunications Industry and the Impact on U.S. Telecommunications Trade

AGENCY: United States International Trade Commission.

ACTION: The Commission will hold a public hearing for the purpose of affording all interested parties an opportunity to present views on the possible trade consequences of court and regulatory changes as they relate to U.S. imports of foreign made equipment and to U.S. exports of domestically

manufactured telecommunications equipment. The initial notice of the investigation indicating the scope of the study, contact persons, and other related information was published in the *Federal Register* of December 14, 1983 (48 FR 55643).

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., on April 24, 1984, to be continued on April 25, 1984, if required. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than April 17, 1984.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation by April 17, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: December 21, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-34521 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-124 (Final)]

Fall-Harvested Round White Potatoes From Canada

Determination

On the basis of the record¹ developed in the subject investigation, the

¹ The record is defined in sec. 207.2(f) of the Commission's *Rules of Practice and Procedure* (19 U.S.C. 207.2(f)).

² Commissioner Stern determines that there is a reasonable indication that a domestic industry is materially injured or threatened with material injury.

³ Material retardation of the establishment of an industry was not raised as an issue in these investigations.

¹ The record is defined in sec. 707.2(i) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

Commission determines,² pursuant to select 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of fall-harvested round white potatoes from Canada, provided for in items 137.20, 137.21, 137.25, or 137.28 of the Tariff Schedules of the United States, which the Department of Commerce has found to be sold in the United States at less than fair value.

Background

The Commission instituted this investigation effective August 2, 1983, following a preliminary determination by the Department of Commerce that fall-harvested round white potatoes from Canada are being, or are likely to be, sold in the United States at less than fair value. Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith and of the change of date of the public hearing was duly given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the *Federal Register* of August 31, 1983 (48 FR 39518) and of September 23, 1983 (48 FR 43412). The hearing was held in Portland, Me. on November 18, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on December 19, 1983. A public version of the Commission's report, *Fall-harvested Round White Potatoes from Canada* (investigation No. 731-TA-124 (Final), USITC Publication 1463, 1983), contains the views of the Commission and information developed during the investigation.

Issued: December 19, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-34528 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-177]

Import Investigations; Certain Film Web Drive Stretch Apparatus and Components Thereof; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate

² Commissioner Haggart not participating.

Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the *Federal Register*.

Issued: December 23, 1983.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-34522 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-177]

Import Investigations; Certain Film Web Drive Stretch Apparatus and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 17, 1983, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Lantech, Inc., 11000 Bluegrass Parkway, Louisville, Kentucky 40299. A supplement was filed on December 6, 1983. The complaint alleges unfair methods of competition and unfair acts in the importation of certain film web drive stretch apparatus and components thereof into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1 through 11, 13, 17, 19, 20, 22, 23 and 28 of U.S. Letters Patent 4,302,920; and (2) contributory infringement of claims 1 through 11, 13, 17, 19, 20, and 22 of the same patent. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 14, 1983, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine

whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain film web drive stretch apparatus into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1 through 11, 13, 17, 19, 20, 22, 23 and 28 of U.S. Letters Patent 4,302,920; and (2) contributory infringement of claims 1 through 11, 13, 17, 19, 20, and 22 of the same patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Lantech, Inc., 11000 Bluegrass Parkway, Louisville, Kentucky 40299.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served.

Muller Manufacturing, Ltd., 2125 Hingston Avenue, Montreal, Quebec H4A 2H9

Muller Packaging Systems, Inc., P.O. Box 4759, 1028 South College Drive, Wilmington, North Carolina 28403

(c) Arthur Wineburg, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E. Street NW., Room 120, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter

both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone (202) 523-0471.

FOR FURTHER INFORMATION CONTACT: Arthur Wineburg, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone (202) 523-4460.

By order of the Commission.

Issued: December 20, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-34520 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-201 (Final)]

Certain Forged Undercarriage Components From Italy

Determination

On the basis of the record¹ developed in investigation No. 701-TA-201 (Final), the Commission determines,² pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)), that industries in the United States are materially injured by reason of imports from Italy of semifinished³ forged links and rollers for the undercarriage of crawler-mounted machinery, provided for in items 664.08, 692.35, or 692.35 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Italy.

Background

The Commission instituted this investigation effective August 30, 1983, following a preliminary affirmative countervailing duty determination by the Department of Commerce on imports of semifinished forged undercarriage links and rollers for crawler-mounted machinery (forged under carriage components) from Italy.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary.

¹The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

²Commissioner Stern dissenting.

³For the purposes of this investigation, the term "semifinished" means not assembled and not machined to final dimensions, whether or not otherwise processed.

U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the *Federal Register* on September 14, 1983 (48 FR 41246). The hearing was held in Washington, D.C. on November 22, 1983, and all persons who requested the opportunity were permitted to appear in person or represented by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on December 21, 1983. A public version of the Commission's report, *Certain Forged Undercarriage Components from Italy* (investigation No. 701-TA-201 (Final), USITC Publication 1465, December 1983) contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: December 21, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-34526 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-175]

Import Investigations; Certain Metal and Wire Shelf Products and Accessories; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the *Federal Register*.

Issued: December 16, 1983.

Donald K. Duvall,
Chief Administrative Law Judge.

[FR Doc. 83-34517 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-156]

Import Investigations; Certain Minutiae-Based Automated Fingerprint Identification Systems; Decision To Extend the Date by Which the Commission Must Decide Whether To Review an Initial Determination on Issues Concerning Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to extend the date by which it must decide whether to review the initial determination on issues concerning temporary relief filed by the presiding

officer in connection with the above-captioned investigation.

Authority:

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53(h) of the Commission's Rules of Practice and Procedure, 47 FR 25134 (June 10, 1982), as amended by 48 FR 20225 (May 5, 1983) and 48 FR 21115 (May 11, 1983); to be codified at 19 CFR 210.53.

SUPPLEMENTARY INFORMATION:

Investigation No. 337-TA-156 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or the sale of certain automated fingerprint identification systems which allegedly infringe claims of U.S. Letters Patent Nos. 4,074,154 and 4,135,147. The investigation was instituted on the basis of a complaint filed by De La Rue Printrak, Inc. See 48 FR 35184 (Aug. 3, 1983).

In response to complainant's motion for temporary relief, the presiding officer on December 5, 1983, issued an initial determination that there is no reason to believe that there is a violation of section 337 in the importation or sale of the accused automated fingerprint identification systems.

On December 12, 1983, complainant filed a notice withdrawing the complaint with prejudice. A motion to terminate the investigation was filed by complainant on December 13, 1983.

Under § 210.53(h) of the Commission's rules, the presiding officer's initial determination would become the determination of the Commission at close of business on January 4, 1984, unless the Commission ordered a review or the deadline for deciding whether to review the initial determination were changed by Commission order. In light of complainant's notice of withdrawal and motion to terminate the investigation, the Commission has ordered the effective date of the initial determination delayed and, therefore, has delayed its decision on whether to review the initial determination, pending a ruling on the motion to terminate the investigation.

Copies of the public version of the initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Room

156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, United States International Trade Commission, telephone No. 202-523-0350.

By order of the Commission.

Issued: December 23, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-34525 Filed 12-28-83; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-176]

Import Investigations; Certain Outboard Motors and Components Thereof; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: December 16, 1983.

Donald K. Devall,
Chief Administrative Law Judge.

[FR Doc. 83-34578 Filed 12-28-83; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-145]

Import Investigations; Certain Rotary Wheel Printers; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Silver Seiko Ltd. (Silver Seiko).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rule, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 23, 1983.

Copies of the initial determination, the settlement agreement, and all other

nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E. Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: December 23, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-34527 Filed 12-28-83; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-167]

Import Investigations; Certain Single Handle Faucets; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Victoria Partner, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Deborah S. Strauss, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: December 21, 1983.

David I. Wilson,
Chief, Unfair Import Investigations Division.

[FR Doc. 83-34513 Filed 12-28-83; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-178]

Import Investigations; Certain Vinyl-Covered Foam Blocks; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 23, 1983, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of the The Doll Toy Company, 320 N. Fourth Street, Tipp City Ohio 45371. A supplement to the complaint was filed on December 8, 1983. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain vinyl-covered foam blocks in the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,518,786. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation, and, after a full investigation, to issue a permanent exclusion order and a permanent cease and desist order.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 20, 1983, ordered that:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain vinyl-covered foam blocks into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,518,786, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—The Dolly Toy Company, 320 N. Fourth Street, Tipp City, Ohio 45371.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Candid Industries, 8/F Flat 5A, Block B, Wah Kai Ind. Centre, 221 Texaco Road, Tsuen Wan, N.T., Hong Kong.
Talbot Toys Inc., Room 953, 200 Fifth Avenue, New York, New York 10010.

(c) Wilhelm A. Zeitler, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street N.W., Room 122, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Donald K. Duvall, Chief Administration Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street N.W., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Wilhelm Zeitler, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0390.

By order of the Commission.

Issued: December 22, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-34523 Filed 12-28-83; 6:46 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-131, 132, and 138 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From the Republic of Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a hearing to be held in connection with the subject antidumping investigations.

EFFECTIVE DATES: December 21, 1983.

SUMMARY: The Commission will hold a public hearing in connection with these investigations on March 20, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-523-0399), Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Hearing

The original notice of institution of these investigations stated that the date of the Commission's hearing to be held in connection with the investigations would be announced later. On December 2, 1983, the Department of Commerce (Commerce) postponed the scheduled dates for making its final determinations in its investigations of less-than-fair value (LTFV) sales from Korea from January 9, 1984, to March 12, 1984, for circular welded carbon steel pipes and tubes (48 FR 54388), and to March 14, 1984, for rectangular welded carbon steel pipes and tubes (48 FR 54390). On December 5, 1983, Commerce similarly postponed the scheduled date for making its final determination in its investigation of LTFV sales of circular welded carbon steel pipes and tubes from Taiwan from January 9, 1984, to March 12, 1984 (48 FR 54526).

Accordingly, the Commission's public hearing is hereby scheduled to begin at 10 a.m. on March 20, 1984, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street N.W., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 15, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10 a.m. on March 7, 1984, in room 117 of the

U.S. International Trade Commission Building. Prehearing briefs must be filed on or before March 13, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 27, 1984.

Staff Report

A public version of the prehearing staff report containing preliminary findings of fact in these investigations will be placed on the public record on March 2, 1984, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Written Submissions

As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before March 27, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 FR 33682, Aug. 4, 1982) and part 201, subparts A through E (19 CFR part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's Rules (19 CFR 207.20).

Issued: December 22, 1983.

By order of the Commission:
Kenneth R. Mason,
 Secretary.
 [FR Doc. 83-34316 Filed 12-29-83; 8:45 am]
 BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

**Import Investigations; Certain
 Woodworking Machines; Order No. 1**

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: December 16, 1983.
Donald K. Duvall,
 Chief Administrative Law Judge.

[FR Doc. 83-34519 Filed 12-29-83; 8:45 am]
 BILLING CODE 7020-02-M

[Investigation No. 731-TA-136 (Final)]

**Cyanuric Acid and Its Chlorinated
 Derivatives From Japan**

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation.

SUMMARY: As a result of an affirmative preliminary determination by the United States Department of Commerce that there is a reasonable basis to believe or suspect that imports from Japan of cyanuric acid and its chlorinated derivatives, provided for in item 425.10 of the Tariff Schedules of the United States, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-136 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

EFFECTIVE DATE: November 18, 1983.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh, investigator (202-523-1369), or Lynn Featherstone, supervisory investigator (202-523-0242), Office of Investigations, U.S. International Trade Commission.

**SUPPLEMENTARY INFORMATION:
 Background**

On July 18, 1983, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly LTFV imports of cyanuric acid and its chlorinated derivatives from Japan. The preliminary investigation was instituted in response to a petition filed on June 3, 1983, by counsel on behalf of Monsanto Industrial Chemicals Co., a U.S. producer of the subject products.

Participation in the Investigations

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.10(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff Report

A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on March 2, 1984, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on March 15, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:14 p.m.) on February 29, 1984. All persons

desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on March 5, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 12, 1984.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analysis, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 21, 1984.

Written Submissions

As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 12, 1984. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submission except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subpart A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4,

1982), and Part 201, subparts A through E (19 CFR part 201, as amended by 47 FR 33882, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: December 21, 1983.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-34624 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-149]

Certain Radar Detectors and Accompanying Owner's Manuals; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Dynascan, Uniden, Larrick's, Capitol Electronics, Cardenal Car Stereo, David's and Apollo Wholesalers.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 20, 1983.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington D.C. 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document

(or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: December 27, 1983.

Kenneth R. Mason,
Secretary.

[FR Doc. 83-34661 Filed 12-28-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30363]

Caney, Fork & Western Railroad, Inc.; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance of 2,000 shares of common stock by Caney, Fork & Western Railroad, Inc.

DATES: This exemption is effective on December 23, 1983. Petitions to reopen must be filed by January 30, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30363 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: R. Lawrence McCaffrey, Jr., 1575 Eye Street, NW, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Info Systems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5404.

Decided: December 21, 1983.

By the Commission, Chairman Taylor, Chairman Sterrett, Commissioners Andre and

Gradison. Chairman Taylor concurred in the result.

James H. Bayne,
Acting Secretary.

[FR Doc. 83-34435 Filed 12-28-83; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-69]

Passenger Train Operation; Union Pacific Railroad Co.

To: Union Pacific Railroad Company; It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Small, California, are temporarily out of service because of a derailment. An alternate route is available via the Union Pacific Railroad Company between Bieber, and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Bieber, California, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreement or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers

in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 1:50 p.m., December 18, 1983.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., December 20, 1983, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 18, 1983.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 83-34436 Filed 12-28-83; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Report on Computer Matching Project; NASA Beneficiaries of Federal Employees' Compensation Act (FECA) Benefits

a. *Authority:* The Office of Inspector General, pursuant to its authority under Pub. L. 95-452 (Inspector General Act of 1978) has initiated a project which will include computer matching. This Notice is provided in accordance with paragraph 5.f. of the Office of Management and Budget's "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982.

b. *Description of the Match:* One of the responsibilities of the Inspector General under the Act is to prevent and detect fraud, abuse and mismanagement in the programs and operations of the National Aeronautics and Space Administration (NASA) while keeping the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the need for and progress of corrective actions. Computer matching in this instance will be the most efficient and complete method of assessing the circumstances surrounding a significant increase of hearing loss claims submitted by NASA employees

under the Federal Employees' Compensation Act (FECA).

The intent is to match automated records of the U.S. Department of Labor for Federal Employees' Compensation Act claims with automated personnel records of NASA Langley Research Center personnel. Our objective is to analyze environmental and occupational conditions of hearing loss claimants to possibly identify the causes for the rise in hearing loss claims at Langley Research Center. For example, OIG may ascertain that certain occupational codes or projects at Langley are more susceptible to hearing loss. Alternatively, the OIG may find that the hearing loss claims may have arisen during a period of time when personnel actions were contemplated. If occupational or environmental factors have contributed to the claims, recommendations will be made to NASA management to correct deficiencies. If improprieties are uncovered, referrals will be made for civil or administrative action, including recovery of improper claims, as well as referrals to the Justice Department for criminal prosecution if the facts and circumstances so warrant.

c. *Federal Records to be Matched:* NASA/10SPER, Special Personnel Records, NASA, 48 FR 48548, October 19, 1983. U.S. Department of Labor FECA National Case Management File, FECA Bill Payment History Files, and FECA Automated Compensation Payment File from DOL/ESA-13, Office of Worker's Compensation Programs, Federal Employees' Compensation Act File, 47 FR 30382, July 13, 1982, as amended by 48 FR 5826, February 8, 1983.

d. *Period of the Match:* The matching should begin in late December 1983, with analysis and additional matches being completed during March 1984. Follow-up procedures may extend through the end of calendar year 1984.

e. *Privacy Protection and Data Security:* The personal privacy of individuals identified on magnetic discs and tapes is protected by strict compliance with the Privacy Act of 1974 (Pub. L. 93-579) and OMB Circular A-108. Information resulting from matching programs is used only for official purposes and "hits" are not released to the press or to the public, unless mandated by law.

All automated data sets will be password protected, and only those who need to know will be given access to the data sets or the passwords. All paper listings of data will be stored in a room which will be locked when not occupied.

f. *Disposition of Source Records, Hits, Sorts and Merged Profile Data:* Source

records will not become part of the NASA/OIG system of records and will either be destroyed or returned to the source agency or component after completion of the project. NASA/OIG will retain information resulting from the computer match (i.e., "hits," listings, sorts, and merged/profile data) as part of investigative case No. I-HO-84-022. This file is part of NASA OIG System of Records NASA 10IGIC, Inspector General Investigations Case Files—NASA, 48 FR 48543, October 19, 1983. The file will be retained and ultimately be disposed of in accordance with the retention and disposal requirements specified in 48 FR 48544, October 19, 1983, for NASA system of records NASA 10IGIC, Inspector General Investigations Case Files—NASA.

Signed at Washington, D.C., on the 22d day of December 1983.

June Gibbs Brown,

Inspector General.

[FR Doc. 83-34418 Filed 12-28-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-98]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Shuttle Science Working Group.

DATE AND TIME: January 16, 1984, 1 p.m. to 5:30 p.m.; January 17-20, 1984, 8:30 a.m. to 5:30 p.m. each day.

ADDRESS: January 16-17, Marshall Space Flight Center, Huntsville, Alabama, Building 4201, January 16, Room 600E, January 17, Room 518, January 18-19, Kennedy Space Center, Florida, Operations and Checkout Building, Room 2138, January 20, Johnson Space Center, Houston, Texas, Building 1, Room 860.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Thompson, National Aeronautics and Space Administration, code NS, Washington, DC 20545 (202/453-2975).

SUPPLEMENTARY INFORMATION: The Shuttle Science Working Group was established under the NASA Advisory Council for the purpose of addressing issues related to cost effective utilization of the Space Shuttle for scientific and engineering research. The overall goal of the Working Group is to

assess the scientific and engineering needs and to investigate the NASA and industry plans for experiment accommodations on the Shuttle and Space Station. Recommendation for low cost, convenient, high flight frequency schemes will be made to the Council and to NASA. The Working Group is chaired by Dr. John E. Naugle and is composed of 14 other members.

The meetings will be open to the public at the locations indicated by time and date up to the seating capacity of the designated rooms (approximately 25-30 persons, including the committee members and invited meeting participants). The meetings will include facility tours at each installation.

Type of meeting: Open.

Agenda

January 16, 1984

1 p.m.—General Orientation and Planning for Working Group Activities
5:30 p.m.—Adjourn

January 17, 1984

8:30 a.m.—Review of Marshall Managed Activities Supporting Low Cost Shuttle Experiments Including Inspection of Payload Processing Facilities
5:30 p.m.—Adjourn

January 18-19, 1984

8:30 a.m.—Review of Kennedy Managed Activities Supporting Low Cost Shuttle Experiments Including Inspection of Payload Processing Facilities
5:30 p.m.—Adjourn

January 20, 1984

8:30 a.m.—Review of Johnson Managed activities Supporting Low Cost Shuttle Experiments Including Inspection of Payload Control Facilities
5:30 p.m.—Adjourn
Dated: December 22, 1983.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-34419 Filed 12-25-83; 8:48 am]

BILLING CODE 7510-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports, Recommendations and Responses Reports Issued

Safety Study: Child Passenger Protection Against Death, Disability, and Disfigurement in Motor Vehicle Accidents (NTSB/SS-83/01)(NTIS Order No. PB83-917005).

Aircraft Accident Report: United Airlines Flight 2885, N8053U, McDonnell Douglas DC-8-54F, Detroit, Michigan, January 11, 1983 (NTSB/AAR-83/07) (NTIS Order No. PB83-910407).

Note.—Reports may be ordered from the National Technical Information Service, 5285

Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703-487-4650 and to order subscriptions to reports call 703-487-4630.

Recommendations to:

Aviation—Federal Aviation

Administration: Oct. 31: A-83-70: Expedite testing to establish standards for smoke or fire detectors for use in airplane lavatories for the early detection of fires independent of passenger or cabin attendant sensory perceptions and initiate rulemaking at the earliest possible date to require installation of the detectors on transport category airplanes. *A-83-71:* Require the installation of automatic thermal discharge-type fire extinguishers effective in sensing and extinguishing fires in and adjacent to lavatory waste receptacles on transport category airplanes. *A-83-72:* Require that the hand fire extinguishers carried aboard transport category airplanes to comply with 14 CFR 25.851(a) use a technologically advanced agent such as Halon extinguishant. *A-83-74:* Evaluate the electrical circuit protection, including reduced circuit breaker rated values and integral component thermal protection devices, needed to eliminate the potential for overheating of the wiring and components in the lavatory flushing pump motor systems in transport category airplanes and issue airworthiness directives as required. *A-83-74:* Require that protective breathing equipment, including smoke goggles, currently carried aboard transport category airplanes to comply with 14 CFR 25.1439 and 14 CFR 121.337 which do not meet the minimum performance standard prescribed in Technical Standard Order (TSO) C99 or equivalent be replaced with equipment which meets the standards. *A-83-75:* Amend 14 CFR 121.337 to prescribe a minimum number of portable protective breathing apparatus with full face masks which will be carried in the passenger compartment of transport category airplanes readily accessible to cabin attendants and flightdeck crews. *A-83-76:* Expedite the research at the Civil Aero Medical Institute necessary to develop the technology, equipment standards, and procedures to provide passengers with respiratory protection from toxic atmospheres during in-flight emergencies aboard transport category airplanes. *A-83-77:* Evaluate and change as necessary the procedures contained in the FAA-Approved Airplane Flight Manuals (AFM) of transport category airplanes relating to the control and removal of smoke to assure that these procedures address a continuing smoke source and are explicit with regard to the presence of fire and the optimum use of cabin pressurization and air conditioning systems. *A-83-78:* Expedite the rulemaking action to require at the earliest possible date that passenger seats with fire-blocking materials be installed in transport category airplanes. *A-83-79:* Expedite the rulemaking action to require at the earliest possible date that cabin emergency lighting be installed for optimum effectiveness during passenger evacuation from smoke-filled cabins. *A-83-80:* Require the installation of tactile aisle markers on overhead stowage

bins and cabin floors or seats of all transport category aircraft which will help passengers to find their way to emergency exits in evacuations when visibility in the cabin is restricted or when the cabin atmosphere is toxic, requiring the passengers to remain close to the floor. *A-83-81:* Require that the location of the tactile emergency exit indicators be depicted in the passenger briefing cards and included in the flight attendant oral briefings. *Nov. 18: A-83-82:* Issue a maintenance alert bulletin to principal airworthiness inspectors to bring to the attention of all operators and maintainers of Brittan Norman BN-2A Islander and BN-2A MK 111 Trilander airplanes the potential for propeller blade deicer boot separations because of inadequate restraint of deicer lead straps and emphasize the importance of inspecting propeller blade deicer boot lead strap restrainers during daily preflight inspections. *Nov. 18: A-83-83:* Urge the Direction Generale de L'Aviation Civil (1) to review the adequacy of the engine manufacturer's program to identify the cause(s) of the axial compressor blade failures in the Turbomeca Artouste III series engines and to require necessary additional investigative measures, and (2) to require appropriate remedial action to prevent failure of the axial compressor blades of these engines. *Dec. 22: A-83-84:* Require that airport operations manuals (AOM) contain explicit instructions and procedures for the reporting of any known change in the operating status of the airport crash/fire/rescue (CFR) equipment to back up fire departments providing CFR services and that all airports or airport tenant employees who may be required to operate airport CFR equipment be knowledgeable of the instructions and procedures. *A-83-85:* Amend 14 CFR 139.49 to prescribe a minimum list of rescue/support equipment to be carried on each crash/fire/rescue vehicle which is commensurate with the airport's index of firefighting and rescue service. *A-83-86:* Develop training programs for airport tenants at Index A and B airports on the basic techniques of fighting aircraft fires for use by airport inspectors in providing guidance to airport operators. *A-83-87:* Issue appropriate notices and instructions to airport inspectors to encourage the operators of Index A and B airports, as well as State airport officials, to provide hands-on firefighting training to airport tenants.

Highway—Governors and Legislative leaders of American Samoa, Guam, Puerto Rico, and the Virgin Islands: Nov. 30: H-83-48: Enact legislation requiring the proper protection of children traveling in motor vehicles, following as closely as possible the elements set forth by the National Transportation Safety Board in its Safety Study, "Child Passenger Protection Against Death, Disability, and Disfigurement in Motor Vehicle Accidents." *H-83-50:* Include, as part of a statewide child passenger safety program, public information and education activities specifically aimed at combating misuse of child safety seats.

Governors and Legislative leaders of Alabama, California, Connecticut, Delaware, Florida, Illinois, Kansas, Kentucky,

Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin: Nov. 30: H-83-51: Include, as part of a statewide child passenger safety program, public information and education activities specifically aimed at combating misuse of child safety seats.

Governors and Legislative leaders of Arizona, Arkansas, Colorado, Georgia, Hawaii, Indiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, Washington, and the Mayor and Chairman of the Council of the District of Columbia: Nov. 30: H-83-52: Include, as part of a statewide child passenger safety program, public information and education activities specifically aimed at combating misuse of child safety seats.

National Highway Traffic Safety Administration: Nov. 30: H-83-53: Expedite the issuance of a final rule requiring that newly-manufactured vehicles under 10,000 pounds gross vehicle weight be equipped with tether anchorages at all rear-most seating locations. H-83-54: Examine the consequences in accidents of misuse and misuse of tether straps with safety seats requiring use of tether straps to determine whether such safety seats should be required to meet all the requirements of Federal Motor Vehicle Safety Standard 213, Child Restraint Systems, without the tether strap attached. H-83-55: Examine the incidence of misuse and misuse of a tether strap with child safety booster seats when used in a rear vehicle seat and the consequences in accidents of such misuse to determine whether the advantages offered by such booster seats outweigh the disadvantages. H-83-56: Amend Federal Motor Vehicle Safety Standard 213, Child Restraint Systems, to require that child safety seats and other child restraint systems include on their certification labels, information for obtaining a replacement copy of the manufacturer's detailed instructions for use. H-83-57: Conduct research and developmental crash testing to explore the feasibility and desirability of developing abdominal and neck load criteria, anthropomorphic dummies, and test procedures for child safety seats and other child restraint systems. H-83-58: Conduct research to examine the potential for other restrained or unrestrained vehicle occupants to sustain injuries in accidents from contact with a child safety seat when used in a motor vehicle and to determine whether additional safety requirements may be necessary and practicable to prevent or minimize potential injuries. H-83-59: Conduct crash tests and accident research to examine the use and accident performance of safety belts with children at various ages to better identify the benefits and limitations of such use.

Child Safety Seat Manufacturers: Nov. 30: H-83-60: Review and revise instructions for use of child safety seats and other child restraint devices as needed to improve the clarity of the instructions and to establish specific height, weight, or other thresholds for required actions which depend on a child's physical characteristics (such as conversion between forward and rear-facing modes and

harness rerouting on convertible child safety seats). H-83-61: Attach permanent labels to safety seats to identify correct safety belt routing points, harness routing points, and correct recline positions for use in motor vehicles.

International Association of Chiefs of Police: Nov. 30: H-83-62: Coordinate and promote the development of training programs for State and local law enforcement officers on the use and misuse of child safety seats and safety belts for law enforcement and accident investigation purposes. H-83-63: Promote the use of statewide traffic accident data systems to collect and analyze specific data identifying the use and misuse of child safety seats and safety belts in motor vehicles involved in accidents and the consequences of such use and misuse.

National Child Passenger Safety Association: Nov. 30: H-83-64: Assist the States in developing effective programs to implement child passenger protection laws.

State of California Dept. of Motor Vehicles: Dec. 14: H-83-65: Expand its medical qualifications requirements for a class 1 or class 2 motor vehicle operator's license to include a provision which requires an applicant to submit complete and explicit medical information, including one's medical history. H-83-66: Consider enacting appropriate legislation to prohibit the falsification and/or omission of medical information pursuant to obtaining a class 1 and 2 motor vehicle operator's license if current administrative authority will not permit the present medical qualifications to be expanded.

California Dept. of Education and Superintendent of Public Instruction: Dec. 14: H-83-67: Initiate a program to retrofit (except where the design makes retrofitting economically prohibitive) all transit-type schoolbuses within your fleet that are not equipped with Federal Motor Vehicle Safety Standard (FMVSS) 222 approved seats with FMVSS 222 approved seat and restraining barriers if these schoolbuses are refurbished during their normal service life.

Federal Highway Administration: Dec. 14: H-83-68: Revise Federal Motor Carrier Safety Regulation 49 CFR 391.43 to incorporate a provision, similar to that specified in 14 CFR 87.20(a) for airman medical certification, which will prohibit the falsification or omission of medical information in connection with a medical certification physical examination.

International Brotherhood of Teamsters: Dec. 7: H-83-34: Assist the American Association of Motor Vehicle Administrators in developing a program to encourage the States to implement a uniform program for specifically licensing or certifying truckdrivers to transport hazardous materials.

Pipeline—American Gas Association and American Public Gas Association: Nov. 4: P-83-29: Notify its member companies of the circumstances of this accident and urge them with respect to customer owned service lines not subject to Federal inspection requirements (1) to encourage their customers to arrange for periodic inspections of buried gas service lines for corrosion and (2) to encourage local governments to institute

requirements for periodic inspections of buried gas service lines for corrosion.

National League of Cities and National Association of Counties: Nov. 4: P-83-30: Notify its member governments of the circumstances of this accident and urge them with respect to customer owned service lines not subject to Federal inspection requirements to institute requirements for periodic inspections of buried service lines for corrosion.

Intermodal—International Society of Fire Service Instructors, International Association of Fire Chiefs, International Association of Chiefs of Police: Nov. 29: I-83-1: Inform its membership, through emphasis in training, publications, and other means, of the safety and command benefits in restricting the access of emergency response groups to hazardous materials accident sites until their potential exposure to safety hazards and the need for their response activities can be determined.

Research and Special Programs Administration: Nov. 29: I-83-2: Determine, by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information such as Materials Safety Data Sheets, to be appended to shipping documents for hazardous materials transported in bulk quantities, giving particular attention to the early emergency response problems posed by n.o.s. commodities in transit. For those modes of transportation for which a positive determination results, incorporate necessary requirements into Title 49 of the Code of Federal Regulations. Dec. 6: I-83-4: Develop, for drums being used to ship regulated hazardous materials, preshipment inspection criteria similar to those established in 49 CFR Section 173.28(m)(1) for drums being reconditioned for reuse, and publish these criteria to assist shippers and carriers in complying with the requirements of 49 CFR Section 171.2(a) and 173.24(a).

Matlack, Incorporated: Nov. 29: I-83-3: Revise its Driver's Manual to include information on the purpose and intent of making shipping papers continuously available to response personnel at the scene of a hazardous materials accident and thoroughly instruct its employees regarding these procedures.

Marine—U.S. Coast Guard: Nov. 16: M-83-29: Amend 46 CFR 185.25 to require that a safety orientation briefing, which includes a demonstration of the proper method of donning life preservers, be provided to passengers on board small passenger vessels that operate on other than protected waters. This briefing should include a statement that all passengers will be requested to don life preservers when possibly hazardous conditions may be expected to be encountered. M-83-80: Amend 46 CFR Part 185 to require that children carried on board small passenger vessels wear life preservers while the vessel is departing protected waters and until such time as the operator determines that it is safe to remove them. M-83-81: Amend 46 CFR 180.25 to require that one approved child size life preserver be provided for each child less than 90 pounds in weight carried on board small passenger

vessels that operate on other than protected waters. *Dec. 7: M-83-82:* Establish a requirement that self-propelled vessels of 1,600 gross tons or greater navigating in narrow rivers, channels, and harbors of the United States have the steering gear compartment manned by a competent person trained to switch the steering gear to all alternate modes of control and operation. *M-83-83:* Require that all vessels over 1,600 gross tons navigating in U.S. waters have written emergency steering procedures and that they conduct and enter in the ship's log regularly scheduled drills involving the loss of steering gear control.

Nedlloyd Bulk Shipping Company: Dec. 7: M-83-84: Take all necessary action to correct conditions of excessive vibrations, mechanical failure of pipelines and flange fittings, and hydraulic system leaks to improve the reliability of the Hydroster model ME-800-TE-1 steering gear system in all modes of system operation. *M-83-85:* Establish written emergency procedures for use onboard all Nedlloyd fleet vessels of 1,600 gross tons or greater and conduct regularly scheduled emergency drills for the loss of steering gear control.

Hydroster/Ship Machinery Works: Dec. 7: M-83-86: Contact ship owners/operators of vessels that are outfitted with the Hydroster model MS-800-TE-1 steering gear and inform them of the hazards involved with simultaneous operation of both main steering pumps. *M-83-87:* Provide revised operating instructions for simultaneous pump operation of the Hydroster model MS-800-TE-1 steering gear for all vessels that are outfitted with this type of steering gear. *M-83-88:* Review the steering gear system design of the Hydroster model MS-800-TE-1 and design an effective alarm which will activate when the system fails due to hydraulic lock.

International Association of Classification Societies: Dec. 7: M-83-89: Advise member societies of the circumstances of the accident involving the Dutch bulk carrier M/V AMSTELVOORN on September 26, 1982, and encourage them to take all necessary action to require that all conditions of excessive vibrations, mechanical failure of pipelines and fittings, and hydraulic system leaks are corrected on vessels which they have classed to improve the reliability of installed Hydroster model MS-800-TE-1 steering gear system in all modes of system operation. *M-83-90:* Encourage member societies to contact ship owners/operators of vessels which they have classed that are outfitted with the Hydroster model MS-800-TE-1 steering gear to inform them of the hazards involved in simultaneous operation of both main steering pumps. *M-83-91:* Encourage member societies to require that vessels which they have classed which have the Hydroster model MS-800-TE-1 steering gear installed operate the system using only one pump until revised operating instructions for simultaneous operation of both pumps are received from the manufacturer. *M-83-92:* Encourage member societies to require an effective alarm on vessels on which the Hydroster model MS-800-TE-1 steering gear system is installed which will activate when the system fails due to hydraulic lock.

Railroad—Burlington Northern Railroad Company: Dec. 22: R-83-101: Establish train

operating procedures requiring the use of the radio to exchange information between trains on, entering, or departing main track routes.

Federal Railroad Administration: Dec. 22: R-83-102: Initiate and/or support a design study to provide a protected area in the locomotive operating compartment for the crew when a collision is unavoidable.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 20 cents per page (\$2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer,

December 23, 1983.

[FR Doc. 83-34570 Filed 12-28-83; 8:45 am]

BILLING CODE 4910-58-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12876]

British Petroleum Co. p.l.c., et al.; Application and Opportunity for Hearing

December 23, 1983.

Notice is hereby given that The British Petroleum Company p.l.c. ("BP"), Sohio/BP Trans Alaska Pipeline Capital Inc. ("Capital") and BP North American Finance Corporation ("BPNAFCO") (BP and Capital and BPNAFCO being sometimes referred to herein as the "Applicants") have filed a joint application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Morgan Guaranty Trust Company of New York ("Morgan") under two existing indentures that have been qualified under the Act, and an indenture which has not been qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Morgan from acting as Trustee under any of such indentures.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under

which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicants allege that:

(1) Morgan currently is acting as trustee under two indentures under which the Applicants are obligors. The indenture, dated as of December 1, 1974, and entered into between Capital and Morgan (the "1974 Indenture") involved the issuance of \$250,000,000 principal amount of 9 3/4 percent Debentures due 1999 (the "1974 Debentures"). The 1974 Indenture was filed as Exhibit 4 to Capital's Registration Statement No. 2-52263 filed under the Securities Act of 1933 (the "1933 Act") and has been qualified under the Act. Capital purchased from BP Pipelines Inc. its 9 3/4 percent Guaranteed Note due 1999 in the principal amount of \$80,500,000, guaranteed by BP (the "1974 Guarantee"). The indenture, dated as of June 15, 1983, and entered into among BP, BPNAFCO and Morgan (the "1983 Indenture") involved the potential issuance of an unlimited number of unsecured debt securities. The form of the 1983 Indenture was filed as Exhibit 4 to Registration Statement No. 2-84471 of BP and BPNAFCO under the 1933 Act and has been qualified under the Act. Registration Statement No. 2-84471 was a Form F-3 shelf registration statement filed for the purpose of registering \$500,000,000 Guaranteed Debt Securities of BPNAFCO.

(2) The Applicants are not in default in any respect under the 1974 Indenture, the 1983 Indenture, the 1974 Guarantee or under any other existing indenture.

(3) In 1983, Morgan entered into a Trust Agreement dated as of April 19, 1983 (the "Kuparuk Indenture") with Kuparuk Transportation Capital Corporation ("Kuparuk"), pursuant to which Kuparuk may issue up to \$200,000,000 principal amount of its short-term promissory notes (the "Kuparuk Notes").

(4) BP is obligated to pay the principal of, premium, if any, and interest on a certain portion of the Kuparuk Notes

pursuant to a guarantee (the "BP Guarantee") contained in a Performance Guaranty Agreement with respect to the Kugaruk Notes.

(5) The Kugaruk Notes have not been registered under the 1933 Act on the basis of the exemption provided by Section 3(a)(3) thereof, and the Kugaruk Indenture has not been qualified under the Act on the basis of the provisions of Section 304 thereof.

(6) The BP Guarantee, if enforced against BP, would rank on a parity with the obligations evidenced by the 1974 Guarantee and the 1983 Indenture, and the obligations of BP under the BP Guarantee, the 1974 Guarantee and the 1983 Indenture are wholly unsecured.

(7) Aside from differences among the 1974 Indenture, the 1983 Indenture and the Kugaruk Indenture as to amounts, interest rates, maturity dates, redemption dates and redemption powers, and differences in form between the 1974 Indenture, the 1983 Indenture and the Kugaruk Indenture, the terms of said indentures are substantially similar.

Such differences as exist between the 1974 Indenture, the 1983 Indenture and the Kugaruk Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Morgan from acting as Trustee under any of said indentures.

(8) Applicants have waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may, not later than January 19, 1984, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-34556 Filed 12-29-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13684; 812-5723]

Guaranteed Mortgage Corp. II; Filing of an Application

December 21, 1983.

Notice is hereby given that Guaranteed Mortgage Corporation II, 4380 South Syracuse Street, Suite 200, Denver, Colorado 80237 ("Applicant"), a Michigan corporation which is an indirect wholly-owned subsidiary of Pulte Home Corporation, a Delaware corporation, filed an application on December 14, 1983, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act for the complete text of the provisions referred to herein and in the application.

Applicant states that it was incorporated for the limited purpose of facilitating the financing of fixed rate long-term residential mortgage loans and does not intend to engage in any business or investment activities other than acquiring, owning or holding and pledging GNMA Certificates (defined below) and obligations fully collateralized by GNMA Certificates ("GNMA-Backed Obligations"), except for the investment on an interim basis of cash proceeds from pledged collateral pending distribution to its security holders. Applicant proposes to issue and sell in series, GNMA-Collateralized Mortgage Bonds (the "Bonds"). Each series will be separately secured primarily by collateral consisting of "fully modified pass-through" mortgage-backed certificates ("GNMA Certificates"), GNMA-Backed Obligations and the payments thereon, fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"), and by one or more reserve funds. GNMA Certificates (or GNMA-Backed Obligations) securing each series of Bonds will be acquired by Applicant using the proceeds of sale of the Bonds (or capital funds provided by its parent companies). Each series of Applicant's Bonds will be issued pursuant to one or

more indentures between the Applicant and National Bank of Detroit (the "Trustee"), as supplemented by one or more supplemental indentures, for such series (the "Indenture").

Prior to issuance of a series of bonds, Applicant represents that it will deliver all pledged GNMA Certificates (including those backing GNMA-Backed Obligations) and all GNMA-Backed Obligations to the Trustee. Collateral held by the Trustee for each series of Bonds will be registered in the name of the Trustee for collateral purposes and the Trustee will have a first priority perfected security interest in all the collateral pledged to secure each such series of Bonds. Property held as collateral security for a series of Bonds issued by Applicant will not secure any other series of Bonds or any other obligations of Applicant. Except when exercising remedies following default, or upon release or discharge of such collateral from the lien of the Indenture relating to such series of Bonds, the Trustee will not be permitted to release to the Applicant any GNMA Certificates or GNMA-Backed Obligations which are required to collateralize Applicant's Bonds. Neither the Applicant nor the Trustee will be permitted to substitute or sell such collateral. Reserve funds and other cash held by the Trustee from time to time as collateral for Bonds (including proceeds of collateral) may only be invested in United States obligations and cash equivalents meeting requirements of rating agencies rating the Bonds of such series. Proceeds of the collateral securing a series of Bonds will be sufficient to pay the principal of and interest on the Bonds of such series when and as the same become due. Applicant or its affiliates will agree to pay all fees and expenses, (including underwriting discounts) incurred in connection with issuance and servicing of the Bonds.

Applicant states that the terms of each offering may provide bondholders the right to request redemption of Bonds, but only to the extent that proceeds of payments on GNMA Certificates are available in the redemption fund for such offering. Under no circumstances will bondholders be permitted to compel the liquidation of GNMA Certificates, GNMA-Backed Obligations or reserve funds in order to redeem Bonds at bondholder request prior to maturity. Redemptions or Bond prepayments may also be required from the balance of the redemption fund or proceeds account for a series of Bonds whenever such redemptions or prepayments (which prepayments will be made on a pro rata basis) are necessary to reduce the

outstanding Bond balance to an amount which is fully supported, as to both principal and interest payments, by the then remaining balance of the GNMA Certificates initially pledged as collateral for that series of Bonds.

Applicant states that issuers of bonds of the type that Applicant proposes to issue are exempt from registration under the Act by virtue of Section 3(c)(5)(C), at least in circumstances where the GNMA Certificates owned by the issuer consist primarily of certificates representing 100% of the underlying pool. Applicant states that the collateral for its Bonds will be substantially identical to collateral used by such issuers. Since a GNMA Certificate is guaranteed by the full faith and credit of the United States, the Applicant maintains that the Bond investor is fully protected whether the underlying GNMA Certificate represents a 100% interest in the mortgages in that pool or any lesser fractional interest in such mortgages. Applicant submits that GNMA Certificates representing less than 100% of a pool of mortgages create interests essentially equivalent to a tenancy-in-common in the pool of mortgages and rights arising under such partial pool certificates are no less than those arising under certificates representing an entire pool of mortgages. Also, it is represented that no series of Bonds will be issued by Applicant unless such series has been rated "AAA" by Standard & Poor's Corporation. Applicant states that the requested exemption will allow it to issue Bonds secured, directly or indirectly by any GNMA Certificates, and that the public interest will therefore be served by expanding the sources of funds available to finance the purchase and retention of GNMA Certificates and, thereby, sources of funds for construction of new housing. In order to assure that Applicant's activities will provide the maximum opportunity to directly benefit the sale of new homes, Applicant agrees that, if its request for exemption is granted, Applicant will first seek to purchase new GNMA Certificates, and GNMA-Backed Obligations secured by new GNMA Certificates, as collateral for series of its Bonds. Applicant, submits, however, that it must retain the flexibility to purchase other GNMA Certificates and GNMA-Backed Obligations to the extent that such instruments are required to collateralize each series of Bonds.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 16, 1984, at 5:30 p.m., do so by submitting a written request setting

forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-34503 Filed 12-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20506; SR-Amex-83-20]

**Self-Regulatory Organizations;
American Stock Exchange, Inc.; Order
Approving Proposed Rule Change**

The American Stock Exchange, Inc. 86 Trinity Place, New York, NY 10006 ("Amex"), submitted on November 2, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and rule 19b-4 thereunder, to increase position and exercise limits for Amex's Treasury bill options. Currently, limits are set at \$500,000,000, or 500 contracts for \$1,000,000 13-week Treasury bills, and \$250,000,000, or 500 contracts for \$500,000 26-week Treasury bills. Amex proposes to double these limits; i.e., to increase limits to \$1,000,000,000 or 1,000 contracts for \$1,000,000,000 13-week Treasury bills, and \$500,000,000, also 1,000 contracts, for \$500,000 26-week Treasury bills.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20363, November 10, 1983) and by publication in the *Federal Register* (48 FR 52528, November 18, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-34502 Filed 12-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 20507; SR-NYSE-83-54]

**Self-Regulatory Organizations; New
York Stock Exchange; Order
Approving Proposed Rule Change**

December 21, 1983.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted on October 27, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Section 313.00 of the New York Stock Exchange Listed Company Manual and the Supplementary Material to Rule 499, subparagraph 13, relating to the Exchange's policy on the listing of non-voting common stock and the delisting of corporations issuing such stock.¹ The rule change modifies Exchange policy by permitting the listing of non-voting common stock of "quasi-governmental corporations" in cases where, solely by reason of legislative or judicial mandate, the issuance of voting stock to the public is restricted.²

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20358, November 8, 1983) and by publication in the *Federal Register* (48 FR 52146, November 16, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder. The

¹ Under current Exchange policy, the Exchange will not authorize the listing of non-voting common stock, or any non-voting stock, however designated, which by its terms is in effect a common stock. Under NYSE Rule 499 creation by the issuer of a class of non-voting common stock is one criterion for delisting from the Exchange.

² In its filing with the Commission, the NYSE states that one such instance pertains to the Student Loan Marketing Association.

Commission notes that this modification to the NYSE's policy relating to listing non-voting common stock is narrowly circumscribed, applying only to those "quasi-governmental corporations" subject to externally generated legislative or judicial mandates restricting issuance of voting stocks to the public.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority,

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-34504 Filed 12-28-83; 9:45 am]

BILLING CODE 8010-01-M

[Release No. 20508; File No. SR-PCC-83-06]

Self-Regulatory Organizations; Filing of Proposed Rule Change; Pacific Clearing Corp.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1983, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change establishes procedures under PCC Rule XXX, Section 1(b) relating to PCC's letter of credit program.¹ The proposal includes PCC's criteria for: (1) Approving letter of credit issuers; (2) withdrawing approval of such issuers; and (3) preventing an undue concentration of letters of credit from any one issuer. The proposal also includes the format and terms of a PCC sample letter of credit and the issuer's application form for approval as a letter of credit issuer, together with its agreement to participate in the program.

More specifically, the proposal would establish guidelines for PCC's approval of both domestic and foreign financial institutions as letter of credit issuers.²

To apply for approval, an issuer must submit an "Application for Approval and Agreement of Issuers of Letter(s) of Credit." An applicant "Domestic Bank," i.e., a bank or trust company organized under either federal or state law, must be: (a) A bank, which is permitted, under the applicable federal or state law, to lend at least \$10 million to any one borrower; or (b) rated "P-1" by Moody's Investor Service ("Moody's") or "A-1" by Standard and Poor's Corporation ("S&P") for letters of credit issued to support commercial paper or similar short-term obligations. A foreign bank must be either state-licensed or a federal branch or agency of a bank organized under the laws of a foreign country. PCC's approval criteria for foreign banks are very similar to those for domestic banks except that not only must the applicant have a P-1 Moody's or A-1 S&P rating for letters of credit issued to support commercial paper or similar short-term obligations, but the applicant's foreign parent bank must have total worldwide assets greater than \$1 billion.³ The PCC board of directors, upon request, can approve, on a case-by-case basis, applicant domestic or foreign banks that do not meet the stated criteria. The PCC board, however, may subject these specially approved issuers to other more limiting terms and conditions as it deems appropriate for the protection of PCC and its members.

The proposal also includes new concentration requirements. Currently, PCC Rule XXX(1)(b) requires that no greater than 25 percent of the aggregate participants fund may consist of letters of credit from one issuer. Under the proposal, however, specially approved domestic and foreign banks can only issue letters of credit up to 1/2 of 1 percent of all members' deposits in the participants fund. Additionally, no single domestic or foreign bank may issue letters of credit in favor of PCC that exceed twice the amount such bank is permitted, under federal or state law, to lend to any one individual borrower.

The proposal's standard form PCC letter of credit includes a number of terms important to both letters of credit issuers and members. First, any letter of credit issued by an approved bank must be irrevocable and governed by the California Uniform Commercial Code. Second, the letter must expire one year after its issuance. An issuer, however, may withdraw the letter of credit five

days after written notice to PCC, although PCC can draw down that letter after notice but before withdrawal is effective.⁴

Finally, the proposal sets forth other miscellaneous provisions relating to the letter of credit program. When PCC withdraws its approval of an issuer, PCC can treat the issuer's outstanding letters of credit as not securing the members' participants fund open account indebtedness and may demand the member to provide substitute collateral. In addition, when a member incurs any liability that would cause PCC to rely on the member's participants fund contribution, PCC first will apply to the liability the cash and securities portion of the member's contribution before relying on the member's letters of credit.

PCC states that the proposed rule change is consistent with Section 17A of the Act. PCC states that the proposal furthers the objectives of Sections 17A(b) (3) (A) and (F) because it enhances PCC's ability to safeguard funds in its custody or control or for which it is responsible.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington D.C. 20549. Reference should be made to File No. SR-PCC-83-06.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

¹ The Commission recently approved PCC's authority to accept letters of credit to secure members' participants fund open account indebtedness. See Securities Exchange Act Release No. 20286 (October 14, 1983), 48 FR 48732 (October 20, 1983).

² The proposal is based on National Securities Clearing Corporation ("NSCC") Rule 4. The Commission approved NSCC's authority to accept letters of credit from participants to secure their clearing fund obligations in Securities Exchange Act Release No. 18052 (August 23, 1981), 46 FR 43341 (August 27, 1981).

³ In conversations with Commission staff, PCC's executive staff has undertaken to present to PCC's board, at its next meeting, modifications to the approval criteria for foreign bank issuers consistent with those discussed in Securities Exchange Act Release No. 19854 (July 18, 1983), 48 FR 33578 (July 22, 1983) (File No. SR-OCC-83-13).

⁴ PCC may draw down a letter of credit (1) after the member has failed to meet an obligation, entitling PCC to charge the member's participants fund contribution, or (2) when the member has failed to tender substitute collateral for an expiring letter of credit. PCC need not demonstrate either of these conditions to draw down a withdrawn letter of credit.

Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-34505 Filed 12-28-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 20511; File No. SR-PSDTC-83-11]

Self-Regulatory Organizations; Filing of Proposed Rule Change; Pacific Securities Depository Trust Co.

December 22, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1983, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change establishes procedures with respect to PSDTC Article XI, Section 11.1 relating to PSDTC's letter of credit program.¹ The proposal includes PSDTC's criteria for: (1) Approving letter of credit issuers; (2) withdrawing approval of such issuers; and (3) preventing an undue concentration of letters of credit from any one issuer. The proposal also includes the format and terms of a PSDTC sample letter of credit and the issuer's application form for approval as a letter of credit issuer, together with its agreement to participate in the program.

More specifically, the proposal would establish guidelines for PSDTC's approval of both domestic and foreign financial institutions as letter of credit issuers.² To apply for approval, an issuer must submit an "Application for Approval and Agreement of Issuers of Letter(s) of Credit." An applicant "Domestic Bank," *i.e.*, a bank or trust

company organized under either federal or state law, must be: (a) A bank that is permitted, under the applicable federal or state law, to lend at least \$10 million to any one borrower; or (b) rated "P-1" by Moody's Investor Service ("Moody's") or "A-1" by Standard and Poor's Corporation ("S&P") for letters of credit issued to support commercial paper or similar short-term obligations. A foreign bank must be either state-licensed or a federal branch or agency of a bank organized under the laws of a foreign country. PSDTC's approval criteria for foreign banks are very similar to those for domestic banks except that not only must the applicant have a P-1 Moody's or A-1 S&P rating for letters of credit issued to support commercial paper or similar short-term obligations, but the applicant's foreign parent bank must have total worldwide assets greater than \$1 billion.³ The PSDTC board of directors, upon request, can approve, on a case-by-case basis, applicant domestic or foreign banks that do not meet the stated criteria. The PSDTC board, however, may subject these specially approved issuers to other more limiting terms and conditions as it deems appropriate for the protection of PSDTC and its members.

The proposal also includes new concentration requirements. Currently, PSDTC Article XI, Section 11.1 requires that no greater than 25% of the aggregate participants fund may consist of letters of credit from one issuer. Under the proposal, however, specially approved domestic and foreign banks can only issue letters of credit up to 1/2 of 1% of all members' deposits in the participants fund. Additionally, no single domestic or foreign bank may issue letters of credit in favor of PSDTC that exceed twice the amount such bank is permitted, under federal or state law, to lend to any one individual borrower.

The proposal's standard form PSDTC letter of credit includes a number of terms important to both letters of credit issuers and members. First, any letter of credit issued by an approved bank must be irrevocable and governed by the California Uniform Commercial Code. Second, the letter must expire one year after its issuance. An issuer, however, may withdraw the letter of credit five days after written notice to PSDTC, although PSDTC can draw down that

letter after notice but before withdrawal is effective.⁴

Finally, the proposal sets forth other miscellaneous provisions relating to the letter of credit program. When PSDTC withdraws its approval of an issuer, PSDTC can treat the issuer's outstanding letters of credit as not securing the member's participants fund open account indebtedness and may demand the member to provide substitute collateral. In addition, when a member incurs any liability that would cause PSDTC to rely on the member's participants fund contribution, PSDTC first will apply to the liability the cash and securities portion of the member's contribution before relying on the member's letters of credit.

PSDTC states that the proposed rule change is consistent with Section 17A of the Act. PSDTC states that the proposal furthers the objectives of Sections 17A(b)(3) (A) and (F) because it enhances PSDTC's ability to safeguard funds in its custody or control or for which it is responsible.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSDTC-83-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be

¹ The Commission recently approved PSDTC's authority to accept letters of credit to secure members' participants fund open account indebtedness. See Securities Exchange Act Release No. 20287 (October 14, 1983), 48 FR 48733 (October 20, 1983).

² The proposal is based on National Securities Clearing Corporation ("NSCC") Rule 4. The Commission approved NSCC's authority to accept letters of credit from participants to secure their clearing fund obligations in Securities Exchange Act Release No. 18052 (August 21, 1981), 46 FR 43341 (August 27, 1981).

³ In conversations with Commission staff, PSDTC's executive staff has undertaken to present to PSDTC's board, at its next meeting, modifications to the approval criteria for foreign bank issuers consistent with those discussed in Securities Exchange Act Release No. 19954 (July 18, 1983), 48 FR 33578 (July 22, 1983) (File No. SR-OCC-83-13).

⁴ PSDTC may draw down a letter of credit (1) after the member has failed to meet an obligation, notifying PSDTC to charge the member's participants fund contribution, or (2) when the member has failed to tender substitute collateral for an expiring letter of credit. PSDTC need not demonstrate either of these conditions to draw down a withdrawn letter of credit.

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 83-34901 Filed 12-28-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2111]

Mississippi; Declaration of Disaster Loan Area

Grenada County and the adjacent Counties of Leflore and Yalobusha in the State of Mississippi constitute a disaster area because of damage caused by flooding which occurred on December 3, 1983. Eligible persons, firms and organizations may file applications for physical damage until the close of business on February 20, 1984, and for economic injury until the close of business on September 24, 1984, at the address listed below:

U.S. Small Business Administration, 322 Federal Building, 100 West Capitol Street, Jackson, Mississippi 36269

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Per- cent
Homesteaders with credit available elsewhere	12.500
Homesteaders without credit available elsewhere	6.250
Businesses with credit available elsewhere	11.000
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	6.000
Other (non-profit organizations including charitable and religious organizations)	10.500

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: December 22, 1983.

Heriberto Herrera,
Acting Administrator.

[FR Doc. 83-34573 Filed 12-28-83; 8:45 a.m.]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #3001-3029, Amdt. #1]

Declaration of Disaster Loan Areas; Agricultural Enterprises Eligibility

The above numbered declarations (48 FR 55798 dated December 15, 1983) are hereby amended as follows:

1. Filing deadlines for eligible agricultural enterprises suffering physical losses are hereby amended to be the later of: (a) February 13, 1984 or; (b) thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation.

2. Declaration #3025 for drought occurring January 1, 1983, is amended to include Midland County in the State of Texas and #3028 is amended to include Ozark County in the State of Missouri. All other information remains the same.

Dated: December 22, 1983.

Bernard Kulik,
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 83-34574 Filed 12-28-83; 8:45 am]

BILLING CODE 8025-01-M

Region V; Advisory Council Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, Indiana, will hold a public meeting at 11:00 a.m., EST Thursday, January 5, 1984, in the School of Business, Room 4095, at Indiana University/Purdue University at Indianapolis to discuss such matters as

may be presented by members, staff of the U.S. Small Business Administration, or others present. Committee meetings at 10:00 a.m.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46209. Telephone number (317) 269-7272.

Jean M. Nowak,

Director, Office of Advisory Council.

December 20, 1983.

[FR Doc. 83-34573 Filed 12-28-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, Materials Transportation Bureau, D.O.T.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in November 1983. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3415-P	DOT-E 3415	Aerojet Strategic Propulsion Co., Sacramento, CA	49 CFR 173.79, 173.92	To become a party to Exemption 3415. (Mode 1.)
4354-X	DOT-E 4354	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119(m), 173.288(d), 173.288(e)	To renew, correct classification of sec-butyl chloroformate, as flammable liquid, and to require cargo tanks to be insulated. (Modes 1, 2, 3)
4354-X	DOT-E 4354	Penwalt Corp., Buffalo, NY	49 CFR 173.119(m), 173.288(d), 173.288(e)	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3)
4453-X	DOT-E 4453	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-tank, for transportation of blasting agent, r.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
5206-P	DOT-E 5206	E.D.C. Inc., Tulsa, OK	49 CFR 173.114a	To become a party to Exemption 5206. (Mode 1.)
5322-X	DOT-E 5322	San Diego Gas & Electric Co., San Diego, CA	49 CFR 172.101, 173.315(a)	To authorize use of a non-DOT specification expanded polystyrene or vacuum-perlite insulated cargo tank, for transportation of certain flammable gases. (Mode 1.)
5923-X	DOT-E 5923	Union Carbide Corp., Danbury, CT	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A000X and 110A500W multi-unit tank cars. (Modes 1, 2, 3)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6113-X	DOT-E 6113	Philadelphia Gas Works Philadelphia, PA.	49 CFR 172.101, 173.315(a)	To authorize use of a non-DOT specification cargo tank, for transportation of certain flammable gases. (Mode 1.)
6464-X	DOT-E 6464	do	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification cargo tanks, for transportation of certain flammable gases. (Mode 1.)
6523-X	DOT-E 6523	FMC Corp., Philadelphia, PA.	49 CFR 173.154	To authorize transport of certain oxidizers, n.o.s., in packaging not authorized in 49 CFR 173.154. (Modes 1, 2, 3.)
6536-P	DOT-E 6536	Hanco International, Inc., North Miami Beach, FL.	49 CFR 173.304(d)(3)(i), 173.33	To become a party to Exemption 6536. (Modes 1, 3.)
6569-X	DOT-E 6569	Robertsaw Controls Co., Anaheim, CA.	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT Specification stainless steel cylinders, for transportation of nonflammable compressed gases. (Modes 1, 2, 3, 5.)
6762-P	DOT-E 6764	Capitol Scientific, Austin, TX.	49 CFR 173.296(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, 4.)
6900-X	DOT-E 6900	Petro-Chem Corp., Houston, TX.	49 CFR 173.119(a), 173.119(b), 173.221, 173.245(a)(26), 173.345(b)(6), 173.249(a)(1), 173.250(a)(1), 173.257(a)(1), 173.263(a)(26), 173.265(d)(6), 173.266(b)(8), 173.271, 173.272(i)(9), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.299(a)(1), 173.357(b), 178.19	To authorize manufacture, marking and sale of non-DOT specification 50- and 55-gallon polyethylene containers similar to DOT Specification 34, for shipment of certain flammable, corrosive, poison B liquids and hydrogen peroxide classed as an oxidizer. (Modes 1, 2, 3.)
6900-X	DOT-E 6900	Plast-Drain Corp., Lockport, IL.	49 CFR 173.119(a), 173.119(b), 173.221, 173.245(a)(26), 173.249(a)(1), 173.250(a)(1), 173.257(a)(1), 173.263(a)(26), 173.265(d)(6), 173.266(b)(8), 173.271, 173.272(i)(9), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.357(b), 178.19	To authorize manufacture, marking and sale of non-DOT specification 50- and 55-gallon polyethylene containers similar to DOT Specification 34, for shipment of certain flammable, corrosive, poison B liquids and hydrogen peroxide classed as an oxidizer. (Modes 1, 2, 3.)
6961-X	DOT-E 6961	Monsanto Co., Saint Louis, MO.	49 CFR 173.154(a)(2), 173.233(a)(4), 178.131	To authorize shipment of certain flammable solids in a DOT-Specification 37A 20-gauge steel drum. (Modes 1, 2, 3.)
7023-X	DOT-E 7023	J. T. Baker Chemical Co., Phillipsburg, NJ.	49 CFR 173.245(e), 173.263(a), 173.264(a), 173.266, 173.283(f)(5), 173.272(g), 173.272(i)(24)	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material. (Mode 1.)
7052-P	DOT-E 7052	In-Situ, Inc., Laramie, WY.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Massachusetts Institute of Technology, Lexington, MA.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Electro-Flow Controls, Inc., Missouri City, TX.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	California Microwave, Inc., Sunnyvale, CA.	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4.)
7056-X	DOT-E 7056	Diamond Shamrock Corp., Irving, TX.	49 CFR 173.204(a)(4), 173.29(m)	To authorize one time reuse of DOT Specification 37A steel drums, for transportation of a certain flammable solid. (Modes 1, 2, 3.)
7070-P	DOT-E 7070	Degussa Corp., Teeterboro, NJ.	49 CFR 173.365, 175.3, 175.630	To become a party to Exemption 7070. (Modes 4, 5.)
7071-X	DOT-E 7071	Philip A. Hunt Chemical Corp., Painesville Park, NJ.	49 CFR 172.101, 173.245, 175.3	To authorize polyethylene packaging in a quantity not provided for in the regulations, for the transportation of a certain corrosive liquid. (Modes 1, 2, 3.)
7072-X	DOT-E 7072	Container Corporation of America, Wilmington, DE.	49 CFR 173, Subparts D, E, F.	To authorize manufacture, marking and sale of non-DOT specification 34 type containers, for transportation of certain liquid organic peroxides, oxidizers and corrosive, flammable and poison B liquids. (Modes 1, 2, 3.)
7541-X	DOT-E 7541	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of non-DOT specification portable tanks, for transportation of certain flammable and nonflammable gases. (Modes 1, 3.)
7694-P	DOT-E 7694	Applied Environments Corp., Woodland Hills, CA.	49 CFR 173.302(a)(4), 175.3	To become a party to Exemption 7694. (Modes 1, 2, 4.)
7687-X	DOT-E 7687	Centur Engineering Co., Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107 Appendix B.	To authorize transport of packages of toy propellant devices as an ORM-D material and excepted from labeling requirements. (Modes 1, 2, 3, 4, 5.)
7687-X	DOT-E 7687	Estes Industries, Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107 Appendix B.	To authorize transport of packages of toy propellant devices as an ORM-D material and excepted from labeling requirements. (Modes 1, 2, 3, 4, 5.)
7687-X	DOT-E 7687	Flight Systems, Inc., Burns Flat, OK.	49 CFR 172.101, 173.111, 175.3, Part 107 Appendix B.	To authorize transport of packages of toy propellant devices as an ORM-D material and excepted from labeling requirements. (Modes 1, 2, 3, 4, 5.)
7687-X	DOT-E 7687	Flight Systems, Inc., Raytown, MO.	49 CFR 172.101, 173.111, 175.3, Part 107 Appendix B.	To authorize transport of packages of toy propellant devices as an ORM-D material and excepted from labeling requirements. (Modes 1, 2, 3, 4, 5.)
8077-P	DOT-E 8077	Rohm and Haas Co., Philadelphia, PA.	49 CFR 173.119, 173.136(a)(3), 173.247(a)(7)	To become a party to Exemption 8077. (Modes 1, 2.)
8129-P	DOT-E 8129	Georgia Institute of Technology, Atlanta, GA.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Hewlett-Packard Co., San Jose, CA.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-X	DOT-E 8129	Earth Industrial Waste Management Inc., Millington, TN.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums. (Mode 1.)
8129-X	DOT-E 8129	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To authorize shipment of certain waste hazardous materials packed in bottles surrounded by absorbent material overpacked in DOT Specification 37A, 17H, or 6J drums. (Mode 1.)
8129-P	DOT-E 8129	Enviro-Chem Waste Management Services, Raleigh, NC.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	F.T.C. Hazardous, Inc., Philadelphia, PA.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3	To authorize use of a non-DOT specification container made of Inconel 718 metal, for shipment of a nonflammable gas. (Modes 1, 2, 4.)
8151-X	DOT-E 8151	Ropak West, Inc., La Mirada, CA.	49 CFR 178.19, Part 173, Subparts D, F.	To authorize shipment of liquid hazardous materials, in non-DOT specification removable head polyethylene drums. (Modes 1, 2, 3.)

RENEWAL AND PARTY-TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8178-X	DOT-E 8178	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize use of a non-DOT specification composite cylinder, for a compressed nonliquefied gas. (Modes 1, 4.)
8180-P	DOT-E 8180	Rohn and Haas Co., Philadelphia, PA.	49 CFR 173.119(m), 173.136(a)(3), 173.247(a)(7).	To become a party to Exemption 8180. (Modes 1, 2.)
8301-X	DOT-E 8301	Container Corporation of America, Wilmington, DE.	49 CFR Part 173, Subparts D, E, F, H.	To authorize use of a 30-gallon capacity DOT Specification 34 polyethylene container, for shipment of certain flammable, corrosive and Poison B liquids, and liquid organic peroxides. (Modes 1, 2, 3.)
8303-X	DOT-E 8308	Caspersen, Inc., Glencoe, IL.	49 CFR 177.842(a), 177.842(b)	To authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria can not be met. (Mode 1.)
8354-X	DOT-E 8354	Compagnie des Containers Paris, France.	49 CFR 173.123, 173.315	To authorize use of a non-DOT specification portable tank, for transportation of certain liquefied petroleum gases and other gases classed as flammable liquids and flammable gases. (Modes 1, 2, 3.)
8389-X	DOT-E 8389	Container Corporation of America, Wilmington, DE.	49 CFR 173.119, 173.346, Part 173, Subpart F.	To authorize shipment of cleaning compounds containing less than 52% hydrofluoric acid in DOT Specification 34 containers. (Modes 1, 2, 3.)
8445-P	DOT-E 8445	Union Carbide Agricultural Products Co., Danbury, CT.	49 CFR Part 173, Subpart D, E, F, & H.	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Diamond Shamrock Co., Irving, TX.	49 CFR Part 173, Subpart D, E, F, & H.	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	SDS Biotech Corp., Irving, TX.	49 CFR Part 173, Subpart D, E, F, & H.	To become a party to Exemption 8445. (Mode 1.)
8451-P	DOT-E 8451	Stresau Laboratory, Inc., Spooner, WI.	49 CFR 173.65, 173.86(e), 175.3	To become a party to Exemption 8451. (Modes 1, 2, 4.)
8465-X	DOT-E 8465	Chase Bag Co., Oak Brook, IL.	49 CFR 173.182(b)(6)(i), 178.241	To authorize sodium nitrate mixture as an additional commodity, and to add water as an additional mode of transportation. (Modes 1, 2.)
8489-X	DOT-E 8489	FMC Corp., Philadelphia, PA.	49 CFR 173.154, 173.182, 173.245b	To authorize shipment of waste arsenical mixture, solid, classed as poison B. (Modes 1, 2, 3.)
8509-P	DOT-E 8509	Reagent Chemical & Research, Inc., St. Gabriel, LA.	49 CFR 173.263(a)(9), 179.201-1	To become a party to Exemption 8509. (Mode 2.)
8509-P	DOT-E 8509	FMC Corp., Philadelphia, PA.	49 CFR 173.263(a)(9), 179.201-1	To become a party to Exemption 8509. (Mode 2.)
8509-P	DOT-E 8509	Olin Corp., Stamford, CT.	49 CFR 173.263(a)(9), 179.201-1	To become a party to Exemption 8509. (Mode 2.)
8510-P	DOT-E 8510	Norsk Hydro Sales Corp., New York, NY.	49 CFR 173.178	To become a party to Exemption 8510. (Modes 1, 2, 3.)
8522-X	DOT-E 8522	Preferred Plastics, Inc., Sterling, VA.	49 CFR 177.839(a)(b), 178.150 Part 173 Subpart F.	To authorize an additional 6 cavity polyethylene case containing one 20 ounce bottle per cavity, for shipment of those commodities authorized in DOT Specification 33A. (Modes 1, 2, 3.)
8606-X	DOT-E 8606	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	49 CFR 173.315	To authorize shipment of monomethylamine in non-DOT specification IMO Type 5 portable tanks. (Modes 1, 3.)
8689-P	DOT-E 8689	Schlumberger Offshore Services, Houston, TX.	49 CFR 173.302, 173.304, 175.3	To become a party to Exemption 8689. (Modes 1, 2, 3, 4.)
8712-X	DOT-E 8712	Allied Chemical, Morristown, NJ.	49 CFR 178.17-4(b)	To authorize an alternate method of closure (i.e., application of four strips of pressure-sensitive tape in a vertical manner) for specification DOT-1M expanded polystyrene packaging. (Modes 1, 2, 3.)
8716-X	DOT-E 8716	Foote Mineral Co., Exton, PA.	49 CFR 173.28(m)	To authorize multi-rip use of DOT Specification 17C steel drums, for shipment of lithium metal, ingots, immersed in oil. (Mode 1.)
8917-X	DOT-E 8917	Morrison-Knudsen Co., Inc., Boise, ID.	49 CFR 173.182, 176.400	To amend requirements pertaining to radiographic examination of bins, to authorize more than eight bins, and to remove restriction requiring bins to be stowed below deck. (Modes 1, 2, 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9047-N	DOT-E 9047	Union Carbide Corp., Danbury, CT.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3	To authorize shipment of ethylene oxide in prescribed DOT cylinders of drums equipped with brass valves. (Modes 1, 2, 3, 4, 5.)
9114-N	DOT-E 9114	Western Electric Co., Lee's Summit, MO.	49 CFR 172.203(d)(1)(ii), 172.203(d)(1)(iii), 172.403(b), 172.403(g)(2), 173.415(a).	To authorize packagings to be used for highway transport to Western Electric of electron tubes containing small amounts of radioactive material (Radium 226 or Krypton 85) without specific determination of total activity or transport index for the package. (Mode 1.)
9138-N	DOT-E 9138	National Aeronautics and Space Administration, Washington, D.C.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize shipment of nitrogen in a fiber reinforced plastic full composite cylinder without a safety relief device. (Mode 4.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8673-P	DOT-E 8637	Russell-Stanley Southwest Inc., Woodbridge, NJ.	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.221, 173.245(a)(26), 173.249(a)(1), 173.250(a)(1), 173.257(a)(1), 173.263(a)(28), 173.265(d)(6), 173.266(b)(6), 173.272(i)(9), 173.276(a)(10), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.346(a), 173.357(b), 173.358(a), 173.359(a), 173.359(b), 178.19.	To become a party to Exemption 8637. (Modes 1, 2, 3.)
EE 8787-P	DOT-E 8787	do.	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.221, 173.245, 173.346(a), 173.357(b), 173.358(a), 173.359(a), 173.359(b).	To become a party to Exemption 8787. (Modes 1, 2, 3.)
EE 8657-P	DOT-E 8657	Celanese Chemical Co., Inc., Dallas, TX.	49 CFR 173.289(a)(2)	To become a party to Exemption 8657. (Mode 2.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6971-X	Chem Service, Inc., West Chester, PA	49 CFR Parts 100-199	To authorize transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, 5.)
9153-N	Ford Aerospace & Communications Corp., Newport Beach, CA	49 CFR 172.101, 173.93(a)(10)	To reclassify and ship a certain Class A propellant explosive as Class B explosive when packaged in specific non-DOT specification fiber drums (Mode 1.)

Denials

9028-N Request by Degussa Corporation, Teterboro, NJ to authorize shipment of a flammable solid, n.o.s. in a non-DOT specification 5-ply waterproof paper bags with inside plastic bag, up to 55 pounds capacity denied November 8, 1983.

Issued in Washington, DC, on December 14, 1983.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-34347 Filed 12-29-83; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

Judicial Decision on Domestic Interested Party Petition Concerning Classification of Certain Imported Speedometers and Odometers Used on "Exercisers"

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Judicial Decision.

SUMMARY: This document gives notice that the United States Court of International Trade has sustained the claim of a domestic interested party that certain imported double-gear hub drive speedometers and odometers used on "exercisers" (stationary exercise cycles) are classifiable under the tariff provision for bicycle speedometers and parts thereof in item 711.93, Tariff Schedules of the United States (TSUS). Customs had been classifying these articles under the provision for speedometers other than bicycle speedometers in item 711.98, TSUS. As a result of this judicial decision, liquidation of entries of the subject articles entered for consumption or withdrawn from warehouse for consumption after the date of publication of this notice shall be suspended until final disposition is made of this matter.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Simon Cain, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5727).

SUPPLEMENTARY INFORMATION: Background

A petition was filed under section 516,

Tariff Act of 1930, as amended (19 U.S.C. 1516), by Stewart-Warner Corporation of Chicago, Illinois, an American manufacturer, requesting that imported speedometers or odometers used on exercisers be reclassified under the provision for bicycle speedometers and parts thereof in item 711.93, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), rather than under the provision for parts of bicycles in item 732.42, TSUS, or under the provision for revolution counters or other speedometers in item 711.98, TSUS, or under the provision for sport, gymnastic, athletic, or playground equipment and parts thereof in item 735.20, TSUS.

In response to the notice of the petition which was published in the *Federal Register* on August 26, 1980 (45 FR 56961), two comments were received.

After consideration of the comments and further review of this matter, it was Customs position that double-gear speedometers and odometers of a type chiefly used on exercisers are classifiable under item 711.98, TSUS, and that standard single-gear speedometers of a type chiefly used on bicycles were classifiable under item 711.93 TSUS.

By letters dated January 8, 1981, file No. 063419, and January 19, 1981, file No. 067053, the petitioner was advised that Customs had recently ruled that speedometers and odometers of a type chiefly used on exercisers were classifiable as speedometers other than bicycle speedometers in item 711.98, TSUS, and that standard single-gear speedometers chiefly used on bicycles were classifiable under the provision for bicycle speedometers in item 711.93, TSUS, and, therefore, its petition was denied.

In response, by letter dated January

23, 1981, the petitioner filed notice of its desire to contest this decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Subsequently, by T.D. 81-127, published in the *Federal Register* on May 12, 1981 (46 FR 26418), notice was given of Customs decision and of the petitioners desire to contest the decision in the United States Court of International Trade.

On December 16, 1983, in the case of *Stewart-Warner Corporation v. United States*, Court No. 81-12-01740, Slip Op. 83-133, the United States Court of International Trade sustained the claim of Stewart-Warner that certain double-gear hub drive speedometers are classifiable under item 711.93, TSUS, as bicycle speedometers. This action was brought pursuant to 19 U.S.C. 1516 and 28 U.S.C. 1581(b) to contest the Customs decision that these speedometers are classifiable under item 711.98 TSUS, as other speedometers.

Action

In accordance with 19 U.S.C. 1516(f) and § 175.31, Customs Regulations (19 CFR 175.31), notice of the judicial decision of the United States Court of International Trade is being given. Liquidation of entries of merchandise covered by the judicial decision entered for consumption or withdrawn from warehouse for consumption after the date of publication of this notice, shall be suspended until final decision is made of this matter. The entries shall then be liquidated, or if necessary, reliquidated in accordance with the final decision.

Authority

This notice is being published in accordance with section 516(f), Tariff Act of 1930, as amended (19 U.S.C. 1516(f)), and § 175.31, Customs Regulations (19 CFR 175.31).

Drafting Information

The principal author of this document was Marvin M. Amernick, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 23, 1983.

Peter Dispenzirie,

Acting Commissioner, (Commercial Operations),

[FR Doc. 83-34569 Filed 12-28-83; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

[Delegation Order No. 182 (Rev. 3)]

Delegation of Authority; Service Center Collection Branch Managers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order is revised to delegate authority to Service Center Collection Branch managers, GS-9 and above, to execute returns under 26 CFR 301.6020-1(b) when the person required to file such return fails to do so. The text of this delegation order appears below.

EFFECTIVE DATE: December 14, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Cavuto, OP:C:O, Internal Revenue Service, 1111 Constitution Ave., NW., Room 7539, Washington, D.C. 20224, (202) 586-4445 (Not a Toll Free Telephone Number).

SUPPLEMENTARY INFORMATION: This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the *Federal Register* for Wednesday, November 8, 1978.

December 2, 1983.

William Wauben,

Acting Assistant Commissioner (Collection),

Order No. 182 (Rev. 3)

Effective date: 12-14-83.

Authority to Execute Returns

The authority granted to the Commission of Internal Revenue, by 26 CFR 301-6020-1(b) and 26 CFR 301.7701-9 to execute returns required by any internal revenue law or regulation made thereunder when the person required to

file such return fails to do so, is delegated to:

1. Revenue Agents;
2. Tax Auditors;
3. Revenue Officers, GS-9 and above;
4. Collection Office function managers, GS-9 and above;
5. Automated Collection Branch managers, GS-9 and above; and
6. Service Center Collection Branch managers, GS-9 and above.

The authority delegated herein may not be redelegated.

Delegation Order No. 182, (Rev. 2), effective March 7, 1983, is superseded.

Dated: November 29, 1983.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 83-34566 Filed 12-29-83; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY**Reporting and Information Collection Requirement Under OMB Review**

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission. USIA is requesting a generic clearance of 13 internal forms used in our procurement activities. The forms are intended to supplement procurement regulations which are under revision and which require changes to standard forms. The internal forms are used temporarily until new or revised regulations are codified and standard forms have been reprinted to incorporate the said changes.

DATE: Comments must be received by January 27, 1984.

Copies.—Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N.

Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485-8676. And OMB Review: David S. Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395-7231.

SUPPLEMENTARY INFORMATION: Title: Supplemental Procurement Forms. Abstract: The information collection conducted with the use of the subject forms is needed to comply with Federal Procurement Regulations. They are used to evaluate offers, and must be on file to document the offeror's compliance with the solicitation requirements. OMB clearance is sought to cover the period up to April 1, 1984, on which date the new Federal Acquisition Regulations will become effective.

Dated: December 20, 1983.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 83-34606 Filed 12-28-83; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION**Agency Forms Under OMB Review**

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains proposed extensions, a revision, a new collection and a reinstatement and lists the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place NW., Washington, D.C. 20503, (202) 395-6880.

DATES: Comments on the forms should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: December 23, 1983.

By direction of the Administration.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

1. Department of Veterans Benefits
2. Consumer Sampling Letter (Questionnaire Quality of Service Rendered)
3. VA Form Letter 27-652
4. On occasion
5. Individuals or households
8. 19,473 responses
7. 3,246 hours
8. Not applicable

New Collection

1. Department of Veterans Benefits
2. Veterans Application for Increased Compensation Based on Unemployability
3. VA Form 21-8940
4. On occasion
5. Individuals or households
6. 20,000 responses
7. 15,000 hours
8. Not applicable

Reinstatement

1. Department of Veterans Benefits
2. Application for Conversion
3. VA Forms 29-358, 29-358d, 29-358e, and VA Form Letter 29-165
4. On occasion
5. Individuals or households
8. 36,308 responses
7. 6,489 hours
8. Not applicable

Extensions

1. Department of Veterans Benefits

2. Claims for Disability Insurance Benefits
3. VA Form 29-357
4. On occasion
5. Individuals or households
6. 19,440 responses
7. 38,880 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request to Employer for Verification of Applicant's Employment and Earning
3. VA Form Letter 26-253
4. On occasion
5. Businesses or other for-profit
6. 45,000 responses
7. 7,500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request to Employer for Employment Information in Connection with Claim for Disability Benefits
3. VA Form Letter 29-459
4. On occasion
5. Individuals or households
6. 5,294 responses
7. 900 hours
8. Not applicable

1. Department of Veterans Benefits
2. Designation of Beneficiary and Optional Settlement
3. VA Form 29-336
4. On occasion
5. Individuals or households
6. 202,941 responses
7. 34,500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Rider for Application for Home Improvement Loan
3. VA Form 26-1816

4. On occasion
5. Individuals or households, businesses or other for-profit
6. 25 responses
7. 4 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan
3. VA Form 26-1847
4. On occasion
5. Individuals or households, businesses or other for-profit, small businesses or organizations
6. 5,000 responses
7. 2,500 hours
8. Not applicable

Extensions, cont.

1. Department of Veterans Benefits
2. Report of Treatment in Hospital
3. VA Form Letter 29-551
4. On occasion
5. Individuals or households
6. 23,757 responses
7. 7,840 hours
8. Not applicable

1. Department of Veterans Benefits
2. Report of Treatment by Attending Physician
3. VA Form Letter 29-551a
4. On occasion
5. Individuals or households
6. 23,757 responses
7. 7,840 hours
8. Not applicable

[FR Doc. 83-34403 Filed 12-29-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 251

Thursday, December 29, 1983

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).

Issued: December 22, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1802 Filed 12-27-83; 11:46 am]

BILLING CODE 6712-01-M

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1

FEDERAL COMMUNICATIONS COMMISSION

December 21, 1983.

Fcc to Hold Closed Commission Meeting, Tuesday, January 10th Following Oral Argument.

The Federal Communications Commission will hold a Closed Meeting on Tuesday, January 10, 1984, for the purpose of issuing instructions to the staff following oral arguments in the Chicago cellular proceeding (CC Docket No. 82-721) and the Pittsburgh cellular proceeding (CC Docket No. 82-796).

Oral Argument, which is open to the public, is scheduled to start at 9:30 A.M. for Pittsburgh and 11:00 A.M. for Chicago, in Room 856, 1919 M Street, NW., Washington, D.C. (See News Release of December 8, 1983, No. 17787).

The Closed Meeting will take place at the same address after the conclusion of the Oral Argument. This meeting is closed to the public because of the disposition of adjudicatory proceedings (See 47 CFR 0.603 (j)).

The following reasons are expected to attend this meeting:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Common Carrier Bureau and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission December 20, 1983. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to hold this Closed Meeting.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Friday, December 23, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First Savings Company of Fremont, Nebraska, an operating noninsured industrial bank located at 2340 North Clarkson Street, Fremont, Nebraska, for Federal deposit insurance.

Application of First State Savings Company, LaVista, Nebraska, an operating noninsured industrial bank located at 7201 South 84th Street, LaVista, Nebraska, for Federal deposit insurance.

Application of Barnett Bank of St. Johns County, St. Augustine, Florida, for consent to establish remote service facilities at Ponce de Leon Mall Shopping Center, U.S. Highway 1 South, St. Augustine, Florida, and at St. Augustine Beach and Tennis Resort, 1981 A1A South, St. Augustine, Florida.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,872-L—The Rocky Mountain Bank, Lakewood, Colorado

Case No. 45,879-L—Franklin National Bank, New York, New York

Memorandum and Resolution re: Implementation of Cooperative Examination Program with the Office of the Comptroller of the Currency
Reports of Committees and Officers:
Report of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Heritage Bank, Ashland, Oregon AP-343 (dated December 15, 1983)

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 23, 1983.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1800-83 Filed 12-27-83; 11:46 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Friday, December 23, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Citicorp Person-To-Person Financial Center of Utah, Salt Lake City, Utah, an operating noninsured industrial bank located at 10 West First South, Salt Lake City, Utah, for Federal deposit insurance.

Application of Bank of Commerce, Morristown, Tennessee, and insured State nonmember bank, for consent to merge, under its charter and title, with City and County Bank of Jefferson County, White Pine, Tennessee, and Southern Industrial Banking Corporation, Knoxville, Tennessee, and for consent to establish the sole office of City and County Bank of Jefferson County and the nine offices of Southern Industrial Banking Corporation as branches of Bank of Commerce.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,847-L (Amended)—United American Bank in Hamilton County, Chattanooga, Tennessee; and United

American Bank in Knoxville, Knoxville, Tennessee

Case No. 45,878-L—First National Bank of Oak Lawn, Illinois

Memorandum re: Office of Corporate Audits and Internal Investigations

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5

U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 23, 1983.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1901-83 Filed 12-27-83 11:46 am]

BILLING CODE 6714-01-M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 12, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

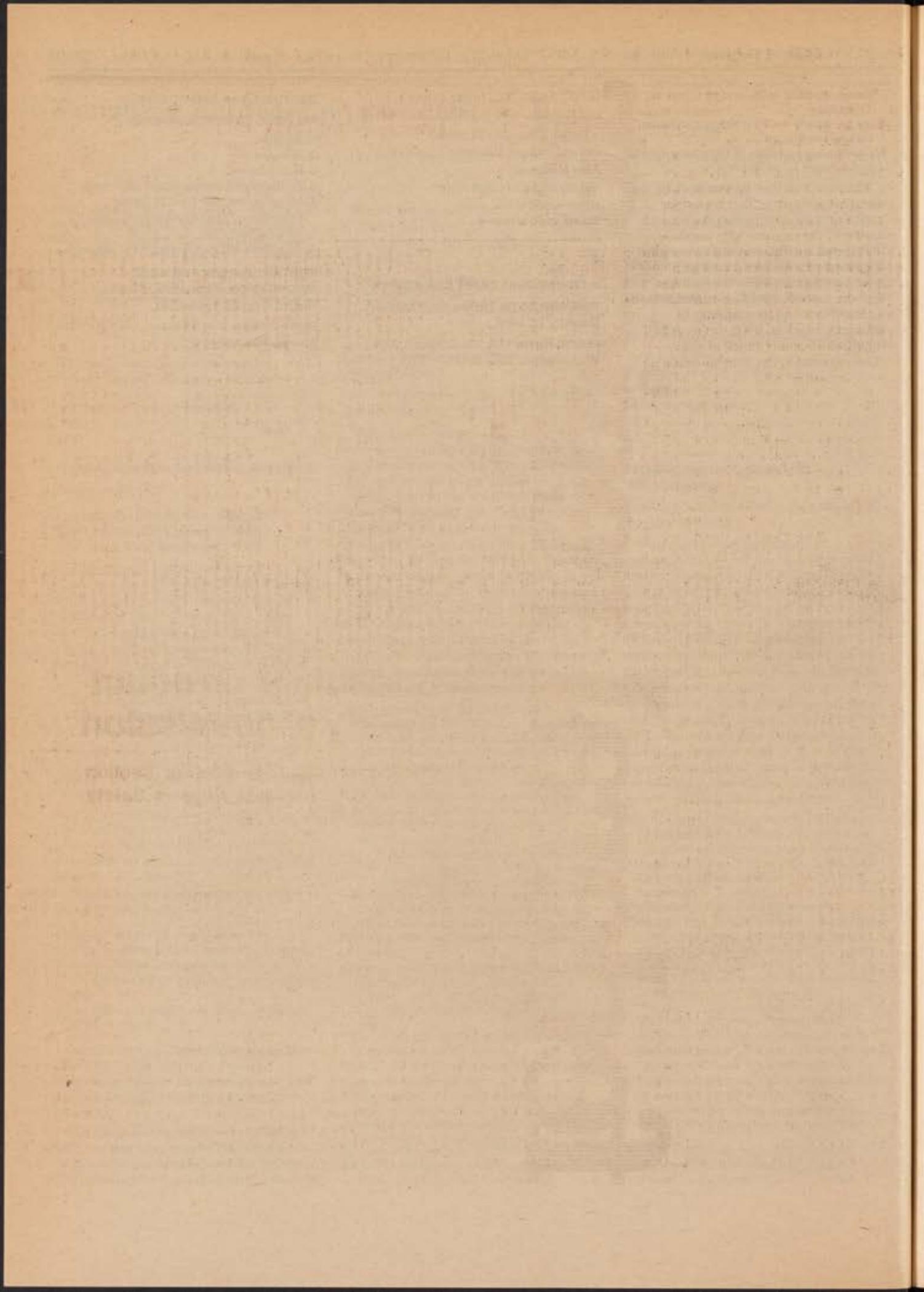
1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 731-TA-125 [Final] (Potassium Permanganate from China)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth E. Mason, Secretary; (202) 523-0161.

[S-1903-83 Filed 12-27-83 1:59 pm]

BILLING CODE 7020-02-M



federal register

Thursday
December 29, 1983

Part II

Consumer Product Safety Commission

Information Disclosure Under Section
6(b) of the Consumer Product Safety
Act; Final Rule

**CONSUMER PRODUCT SAFETY
COMMISSION****16 CFR Part 1101****Information Disclosure Under Section
6(b) of the Consumer Product Safety
Act.**

AGENCY: Consumer Product Safety
Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission publishes a final interpretive rule containing its policy and procedure for disclosing to the public information from which the public can readily ascertain the identity of the manufacturer or private labeler of a consumer product. The rule interprets section 6(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b), which limits the Commission's authority to disclose such product-specific information to the public. The rule explains how the Commission will carry out its section 6(b) responsibilities to give manufacturers and private labelers notice of proposed information disclosures and to take reasonable steps to assure the accuracy of the information to be released, the fairness of the release under the circumstances, and the release will be reasonably related to effectuating the purposes of the statute the Commission administers.

EFFECTIVE DATE: This rule shall be effective on December 29, 1983.

FOR FURTHER INFORMATION CONTACT: Michael J. Gidding, Office of the General Counsel, 301-492-6980 or Todd Stevenson, Freedom of Information Officer 301-492-6800, Consumer Product Safety Commission, Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: On November 5, 1982, the Commission published a proposed interpretive rule setting forth the policy and procedure it proposed to follow under section 6(b) of the CPSA when releasing to the public information from which the identity of the manufacturer or private labeler of a consumer product could be readily ascertained. In the proposed rule, the Commission attempted to strike a balance between the right of the public to obtain information from the government, particularly under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the rights of manufacturers and private labelers ("firms" or "manufacturers") under section 6(b) to receive notice, to have an opportunity to comment on information about the products they manufacture or private label, and to have the

Commission take reasonable steps to assure the accuracy and fairness of the information to be disclosed and that disclosure is reasonably related to effectuating the purposes of the acts the Commission administers.

The Commission received thirty-four comments in response to the proposal. The majority of the commenters were trade associations and consumer organizations.

In general, the consumer organizations supported the proposed rule on the grounds that it struck a reasonable balance between the rights of the public and the rights of identified firms. However, industry commenters objected to at least some portions of the proposed rule. The industry objectors generally contended that the rule did not go far enough to protect the rights of firms to be secure from inaccurate or misleading information disclosures. These commenters contended that the proposed rule gave the Commission too much discretion to determine when section 6(b) does not apply to the disclosure of information.

Many industry commenters expressed concern that the Commission did not undertake to restrict disclosure from people, such as product liability attorneys or competitors, who might seek to use the information in a manner that could prejudice a firm's product.

The Commission found many of the specific industry comments helpful and has revised the final rule in a number of places to reflect these comments. The Commission believes, however, that its obligation under the statute to take reasonable steps to assure accuracy need not meet the exacting standard of demonstrating to a certainty that the information to be disclosed is accurate and not misleading. The Commission does not believe, as many of the industry commenters apparently do, that it must be a guarantor of the accuracy of all information in its possession, especially that which the Freedom of Information Act requires it to release upon request.

In enacting section 6(b) Congress attempted to strike a balance between the right of the public to have free access to the information in the possession of the government while minimizing the possibility that a product might be unfairly disparaged. To accomplish this goal, the Commission believes that Congress contemplated a process by which the Commission, through its own research and investigation and with the assistance of identified firms, would be able to establish prior to disclosure that there was some reasonable and reliable

indication the manufacturer-specific information was accurate. The Commission believes that this final rule gives effect to the letter, spirit and intent of section 6(b). The Commission also believes that Congress did not intend to constrain it from carrying out the broad purposes of the Consumer Product Safety Act (e.g., to disseminate information to consumers on the comparative safety of consumer products and to promote research and investigation of deaths and injuries associated with consumer products) by unreasonably limiting the disclosure of information concerning specific products to only those individuals who will use the information for private purposes not adverse to the interest of the firms.

The Commission is therefore publishing a final rule that does not include many of the extreme measures advocated by some industry commenters. It has, however, revised several sections of the proposed rule to reflect a number of reasonable concerns voiced by commenters. For example, the Commission has modified provisions of the rule governing reasonable steps to assure accuracy, fairness, and reasonable relation to effectuation of purposes in a manner which it believes will be of benefit both to the firms and to consumers.

The specific comments on the proposed rule and the Commission's responses are discussed in the following paragraphs.

Section 1101.1 General Background.

Section 1101.1 contains the general background to the rule. The proposed rule did not include provisions implementing section 6(b)(6) of the CPSA, the provision that requires the Commission to establish internal procedures for the Commission-initiated disclosure of information about consumer products. These procedures are currently set forth in the Commission's internal directive system.

Several commenters felt that the proposed rule should have included such a provision. In addition, many commenters requested that the internal clearance procedures for such information disclosures be published in the **Federal Register** for notice and comment.

Both the types of information covered by affirmative disclosures of information and the procedures the Commission follows to assure that such disclosures are accurate and not misleading under section 6(b)(6) differ substantially from the types of information subject to section 6(b)(1) of the CPSA and from the procedures under sections 6(b)(1) through 6(b)(5)

used to process that information. Accordingly, the Commission declines to include in this rule a provision interpreting section 6(b)(6) of the CPSA. The Commission will separately consider the issue of whether notice and comment are legally necessary or, in the alternative, are desirable for any internal guidance published under section 6(b)(6).

Section 1101.11 General Application of the Provisions of Section 6(b)(1).

(a) Products Not Under Commission Jurisdiction

As proposed, this section limited the applicability of section 6(b) to information pertaining to products within the Commission's jurisdiction where the product was specifically "mentioned" in the information. Eleven commenters stated that the Commission should apply the section 6(b) protections to all product-specific information to be disclosed, even if the Commission lacks jurisdiction over the product mentioned. These commenters objected to using jurisdiction as the determining factor in a decision whether to comply with section 6(b), noting that in many instances jurisdiction over a specific product may be disputed. These commenters foresaw situations arising in which initial decisions that the Commission has jurisdiction over specific products may later be overturned in the courts. If the Commission interpreted section 6(b) as applying only to products within the Commission's jurisdiction, according to the commenters, such decisions would eliminate the section 6(b) protections for firms that had previously enjoyed the benefits of those safeguards.

The proposed rule tracked the statutory language of section 6(b). Nothing in the statute indicates that Congress intended for the CPSC to extend the section 6(b) procedures beyond the jurisdiction of the acts enforced by the agency nor does the CPSC generally retain information on products outside its jurisdiction. To the contrary, when the Commission receives information concerning products outside its jurisdiction, e.g., complaints about automobiles, it generally forwards the information to agencies with appropriate jurisdiction. The agency to whom the information is transmitted is not required by receipt of such information to follow itself the section 6(b) procedures prior to its own disclosure of such information.

In some cases the agency may have information in its files regarding products for which no jurisdictional determination has been made. As a

general matter, the CPSC processes requests for this information in accordance with the section 6(b) procedures as a matter of administrative convenience. In other cases where jurisdiction has been contested and a court has ruled that the agency lacks jurisdiction, most of the information regarding the product will have been introduced into the public record through the judicial proceeding, and so section 6(b) concerns will be minimal.

In the rare case that the CPSC has information in its files which clearly pertains to a product outside agency jurisdiction, the Commission will make a case-by-case determination whether or not to use section 6(b) procedures. However, the agency does not consider itself legally obligated to follow 6(b) procedures for product information regarding items outside its jurisdiction.

(b) Types of Information Subject to Section 6(b)

Several commenters wanted subsection (a)(2) of § 1101.11 expanded to cover information obtained, generated, or received by the Commission. As originally drafted, paragraph (a)(2) of § 1101.11 merely used the word "obtained." In using the word "obtained," the Commission did not intend to limit its responsibilities under section 6(b), but rather intended to cover all information in the possession of the Commission. Accordingly, the Commission has revised § 1101.11 of the final rule to reflect the concerns of those commenters by including the terms "generated or received."

(c) Information Presented in Litigation and Other State Local and Foreign Government Proceedings

One commenter wanted § 1101.11(a)(3) revised to state that public disclosure occurs when the CPSC staff introduces information in litigation and other state, local, or foreign government proceedings. The Commission declines to adopt this suggestion for two reasons. First, the sections of this rule concerning information not subject to section 6(b) and the exemptions from the section 6(b)(1) requirements deal specifically with issues concerning litigation and administrative proceedings. Second, adopting the commenter's suggestion in a blanket fashion would require that evidence prepared by the Commission for use in litigation against a firm be forwarded to and commented on by the firm before submission to the decision-maker. Congress clearly did not intend this result.

Section 1101.11(b) Information Not Subject to Section 6(b)(1)

(a) Disclosures Required by Law; Information in Public Proceedings

The proposed rule listed certain examples of information disclosures to which the Commission believes the requirements of section 6(b)(1) do not apply. These included information disclosures that the law requires the Commission to make publicly available and the filing or presentation of information by the Commission in public proceedings such as administrative hearings and litigation. Four commenters objected to the exemption for information which the Commission is required by law to make publicly available on the ground that there is no statutory basis for the exemption.

The provision concerning information required by law to be made publicly available was designed to deal with export notifications under the acts the Commission administers (15 U.S.C. 2067(b), 15 U.S.C. 1273(d), 15 U.S.C. 1202(c)). Those acts require that not less than 30 days before any person exports to a foreign country a product that violates a consumer product safety rule or a rule under the Federal Hazardous Substances Act (FHSA) or Flammable Fabrics Act (FFA), that is banned under one of the statutes, or that is misbranded under section 2(p) of the FHSA, that person file a statement with the Commission notifying the Commission of the intent to export the product. Upon receipt of the statement, the Commission must notify the government of the country to which export is to be made. The notice must specify the anticipated date of shipment to the country, the port of destination, and the quantity of the product to be exported. The notice must also provide an explanation of the safety standard or ban that the product violates.

The time frames contained in the export provisions conflict with those in section 6(b). An exporter must give the Commission at least 30 days notice that it intends to export the product. The statutes confer no authority on the Commission to prohibit a permissible export for a period beyond 30 days. Section 6(b), however, prohibits the disclosure of information to the public for a period of at least 30 days unless the Commission makes a public health and safety finding. Acceptance of the position that section 6(b) applies to export notifications would create an anomaly by which compliance with section 6(b) would deprive a recipient country of the statutorily-mandated notice. The result is that products the

country might object to receiving would be received and distributed before the section 6(b) process is complete. Because the Commission believes that Congress did not intend this result, the Commission excluded export notices from the provisions of section 6(b). The Commission has not revised this section of the rule.

In addition to the foregoing, although not mentioned in proposed § 1101.11, the Commission is required by law (15 U.S.C. 2076(j)) to furnish to Congress and the President detailed and lengthy reports. The Commission believes that application of section 6(b) to these reports would undermine the ability of the Commission to provide the requisite information to Congress and the President in a timely manner. Accordingly, the Commission has amended the final rule to make it clear that section 6(b) does not apply to information that the Commission is required to report to Congress and the President.

b. Information Presented in Litigation Public Proceedings

Several commenters objected to the exception from section 6(b) contained in the proposed rule for information filed or presented in public proceedings such as hearings or litigation. Most of these commenters claimed that the statutory exceptions from sections 6(b)(1) through (b)(3) for litigation and administrative proceedings is limited by section 6(b)(4) to proceedings or hearings held under the Consumer Product Safety Act. The commenters claimed that the exemption in the proposed rule for information filed during hearings and litigation was too broad and should either be modified to reflect the fact that it applies only to hearings conducted under statutes the Commission administers or should be deleted entirely as being redundant. The commenters noted that § 1101.11(b)(1) of the proposed rule already restated the section 6(b)(4) exemptions.

The Commission believes that these commenter's views are overly restrictive but agrees that the proposed rule was never intended to exempt from the section 6(b) safeguards all information presented in any hearing or proceeding regardless of whether the agency was a party. Accordingly, § 1101.11(b)(4) has been revised to apply only to proceedings or litigation to which the Commission is a party. The Commission has made this revision because the Commission may become involved in litigation not conducted under the acts it administers. For example, the Commission may be named as a third party in private litigation.

Compliance with section 6(b) in these types of cases, however infrequent, could well impede or even nullify the ability of the Commission to effectively defend itself. Nothing in the legislation indicates that Congress intended section 6(b) to apply to litigation. Indeed the converse appears to be true since all adjudicatory and judicial proceedings referenced in the acts administered by the Commission are excepted from section 6(b). The Commission has revised the final rule to reflect that section 6(b) does not apply to information filed or presented in litigation to which the Commission is a party and which is not otherwise subject to the express exceptions of section 6(b)(4).

Section 1101.12 Commission Must Disclose Information to the Public

(a) Persons to Whom Disclosure is Not Deemed to be Public Disclosure

The proposed rule contained a number of examples of disclosures that would not be considered public and therefore would not be covered by section 6(b). These included disclosures to employees, agents, representatives and contractors of the Commission; to state officials commissioned as officers under section 29(a) of the CPSA, 15 U.S.C. 2078(a); to members of the Commission's chronic hazard advisory panels (CHAPs); to other Federal agencies or state or local governments to whom accident and investigation reports are provided under section 29(e) of the CPSA, 15 U.S.C. 2078(e); and to the Chairman or ranking minority member of a Congressional committee or subcommittee having jurisdiction over the matter which is the subject of the information requested.

(1) *Contractors, CHAP members.* Several commenters expressed concern about disclosure to contractors and CHAP members, noting that because these persons are not necessarily under the direct control of the Commission, there is a risk that they might subsequently make a disclosure of the information in the violation of section 6(b). Some suggested that information disclosed to these people be subject to section 6(b) to avoid that danger. Others recognized that, while it would be appropriate for the Commission to furnish these people information without complying with section 6(b), it would be inappropriate for the CHAP members or contractors subsequently to disclose it to the public if the Commission had not complied with the statute.

The Commission must be able to furnish timely and unedited information to its agents and employees. The

Commission also recognizes that firms are entitled to the statutory safeguards if public disclosure of the information is subsequently made by an agent, contractor, or CHAP member. The Commission routinely apprises these individuals of their statutory obligation not to disclose information without the Commission's permission. The Commission will continue to do so. The Commission declines to adopt the suggestion that the rule specify penalties for contractors and CHAP members who violate section 6(b). These are matters covered by the personnel and contracting procedures of the agency, and violations will be dealt with in accordance with those procedures.

(2) *Congressional subcommittees.* One commenter objected to the exemption for the disclosure of information to Congressional subcommittees stating that there was no statutory basis for the provision. In the alternative, the commenter suggested that the Commission include in § 1101.12(g) a statement that disclosure of information to Congressional subcommittees shall be accompanied by a disclaimer, by an explanation that the Commission has not complied with section 6(b), and by a request that the information be treated as confidential and not publicly disclosable until the Commission has complied with its obligations under section 6(b).

As discussed earlier, the Commission believes that making section 6(b) applicable to disclosures of information to Congressional committees and subcommittees could impede the ability of the Commission to provide timely and complete information requested by Congress on specific products or classes of products. The Commission believes that Congress did not intend this effect when it promulgated section 6(b), see, e.g., section 6(a)(7) of the CPSA, which specifies that nothing in the CPSA shall authorize the withholding of information by the Commission from the authorized committees or subcommittees of Congress. Rather the Commission believes that Congress was concerned with disclosures of information to the public. Therefore, the Commission declines to delete this provision. However, as a matter of course, the Commission will place material forwarded to Congressional committees in context by informing the receiving committee when the information disclosed identifies a firm and when the agency has not complied with section 6(b).

(3) *State and local authorities.* The same commenter also had several comments about disclosure of

information to state and local authorities commissioned as officers of the Commission (*see* section 29(a)(2) of the CPSA) and about the disclosure of accident and investigation reports to other federal, state and local governments (*see* section 29(e) of the CPSA). Section 29 authorizes the Commission to disclose certain information to federal, state and local authorities without first complying with section 6(b). Those authorities may not make the information public until the Commission has complied with section 6(b).

With regard to commissioned officers, the commenter requested that the exception from section 6(b) apply only when the information provided to the officials is necessary for them to perform their designated function as Commission employees or agents. The commenter also suggested that the rule make it clear that, absent compliance with section 6(b) by the Commission, these officials would not be permitted to disseminate the information to the public. The Commission agrees with these comments and has clarified the rule accordingly.

With regard to the Commission's furnishing information to other federal, state or local agencies, the commenter took the position that the Commission must comply with section 6(b) before releasing to these agencies any investigation reports not prepared by Commission employees or agents, *e.g.*, reports prepared by local fire officials. The commenter noted that, by its terms, section 29(e) applies only to reports made under the CPSA by officers, employees, or agents of the Commission. The commenter further contended that those officials receiving reports under section 29(e) could not disclose them until the Commission had complied with section 6(b).

The Commission agrees with the latter point but believes that the commenter's position on what can be made available to such agencies is too limited. In many instances, as part of the investigation of incidents, Commission investigators collect reports from local officials with expertise in investigating such matters. Those reports are incorporated into the Commission investigator's report. Accordingly when a Commission employee includes such information in a report, the Commission believes that the information is releasable under section 29(c) to federal, state or local agencies notwithstanding the fact that the Commission employee may not have done the investigation himself. In such situations, therefore, the Commission believes that section 6(b) does not

restrain it from disseminating the material to federal, state or local officials. The officials, however, may not disclose the information to the public until the Commission complies with section 6(b).

Section 1101.13 Public Ability to Ascertain Readily Identity of Manufacturer or Private Labeler.

The proposed rule attempted to differentiate between situations in which the public can readily ascertain the identity of a firm from the information to be disclosed and situations in which it cannot. The rule contained two examples of non-public information disclosure: (1) Disclosure from which only a few members of the trade would be able to ascertain the identity of the manufacturer or private labeler; and (2) disclosure that would require research to determine the identity of the manufacturer.

Many commenters questioned both examples. Most suggested that the examples simply be deleted. Some also wanted a statement that, if there were any question as to whether the public could readily ascertain the identity of a manufacturer from information, section 6(b) would apply to that information.

The examples in the proposed rule were intended to be illustrative rather than all encompassing and to reflect how the Commission in practice handles such matters. The Commission agrees with the commenters that there is no effective way in the text of the rule to categorize all situations in which section 6(b) would apply because the public could identify a firm from the information to be disclosed and those in which it would not. For example, the description in the proposed rule concerning members of the trade was intended to deal with the disclosure of *generic* information concerning a type of product manufactured by a small number of manufacturers, one of whom might be able to identify a competitor's product from the information even though it was not specifically mentioned or described in the disclosure. In that instance, if the information were disclosed to the competitor, the competitor might be able to ascertain the identity of the manufacturer even though members of the general public could not. Similarly, the degree of research necessary to ascertain the identity of a firm is a matter of speculation. The Commission has no way of quantifying or pinpointing precisely when section 6(b) would cease to apply to information because the degree of research necessary to ascertain the firm's identity is so great that the information could be construed

as not identifying or describing a specific manufacturer's product.

There is a practical resolution to this problem which the Commission adopts in this rule. If the manner in which a consumer product is designated or described in information which the Commission plans to disclose publicly is sufficient to permit a firm to be identified readily by a reasonable person, with no specific expertise in the matter, the information will be forwarded to the manufacturer for section 6(b) comment. If it is not, the staff will not give the requisite notice. The Commission has revised the regulation to state that section 6(b) applies when the identity of a manufacturer or private labeler of a product can be readily ascertained by a reasonable person receiving the information in the form in which it is disclosed. Such information includes not only the name of the manufacturer but also any technical description of the product which would permit the public to readily determine the identity of the manufacturer. The staff will not, however, customarily perform research or look beyond the face of the document to determine whether the identity of a manufacturer can be ascertained.

Section 1101.21 Form on Notice and Opportunity to Comment.

(a) *Oral Notice*

The proposed rule contained a provision stating that the Commission will give oral notice to a firm and request that the firm comment orally when the time for disclosure is of the essence. Five commenters objected to this provision. One claimed it was too vague because it did not provide guidelines or definitions as to when time is of the essence. Two others suggested that a "time-is-of-the-essence" finding would only be appropriate where the Commission has made a public health and safety finding pursuant to section 6(b)(1) that accelerated disclosure is necessary and has published a notice of its finding in the *Federal Register*. Three commenters suggested that, if the Commission gives oral notice, in the interest of fairness the Commission should follow the oral notification with written notice and should permit the firm to submit written comments. These commenters noted that requesting oral comment from the firm could limit the firm's ability effectively to communicate information to the Commission on the accuracy of the material to be disclosed.

The Commission agrees that oral notice under section 6(b) is appropriate only when the Commission makes a

public health and safety finding and publishes that finding in the *Federal Register*. After a public health and safety finding, if the Commission has notified the firm orally and has requested oral comment, the Commission will neither delay the disclosure while it follows an oral notification with a written one nor delay release to await a manufacturer's written response to the Commission's request for comments. The Commission, however, will accept and evaluate written comments from the firm, if the process does not delay a planned disclosure.

(b) *Content of Notice*

The proposed rule specified the types of information that the Commission will furnish to a firm from which it seeks comment. The rule stated that the Commission will provide the firm with the information that it proposes to release or a summary of that information as section 6(b)(1) expressly permits. The rule further provided that the Commission will inform the firm that its comments or a summary of those comments will be included in any disclosure. In addition, the proposed rule provided that the Commission will generally describe the manner in which the Commission plans to disclose the information, but noted that once the Commission had furnished such a general description, it would not give further notice if it were later to release the same type of information in an abbreviated form. As an example, if the Commission had informed a firm that the information would be disclosed by press release, the agency would not provide further notice if it later released a summary of the press release.

(1) *Summaries of Information to be Disclosed.* A number of commenters expressed concern about receiving only summaries of the information to be disclosed. Some stated that a firm should always receive the actual text of the information; and others recognized that, in some unusual circumstances, providing a summary might be appropriate. Sending summaries of information to firms for comment is statutorily permissible. In the agency's experience, however, it has generally been more fruitful to provide firms with the actual text of what is to be disclosed rather than a summary of that information. Receiving the actual text rather than a summary permits manufacturers to furnish more detailed comment. As a matter of policy, the Commission intends to continue its present practice of sending the actual text insofar as practical. However, the Commission has not deleted the

reference to summaries in the final rule as requested by some commenters because the statute permits summaries of information to be sent to manufacturers.

(2) *Release of Summaries of Manufacturers' Comments.* Five commenters objected to releasing summaries of firms' comments in lieu of disclosing the actual comments. These commenters expressed concern that a summary would not adequately reflect the views of the firm and suggested that the agency, as a matter of policy, release the actual text of the firm's comments or a summary approved by the firm. The Commission generally agrees with these comments. As a matter of practice, the Commission will release the complete text of a firm's comments or, if the firm wishes to prepare a summary, the firm's summary of its comments, provided the summary is received in a timely manner. The Commission, however, will withhold the portion of a firm's comments that concerns information the Commission decides must be withheld under section 6(b). To release that portion of a firm's comments that references withheld information could result in the release of the withheld information. Should the Commission determine that the release of a summary of the firm's comments is appropriate and it is impractical to obtain a summary from the firm or the firm refuses to prepare a summary, the Commission staff will prepare its own summary for release without seeking further comment from the firm, and as a courtesy send a copy to the firm simultaneously with disclosure.

(3) *Summaries of a news release.* Two commenters disputed the example contained in the proposed rule that indicated that if the Commission notified a manufacturer about an intended disclosure of information by means of a news release, the Commission would not provide notification when it subsequently released a summary of the news release. These commenters claimed that the Commission could only release the actual text of the news release, absent prior notification of the intent to release the summary.

The Commission disagrees with these commenters. The provision covering the manner in which disclosure would be made was inserted in the proposed rule solely to inform manufacturers and private labelers of the means by which information would be transmitted to the public. The provision was not to provide them with the power to "clear" or "veto" the text of Commission-initiated releases. Section 6(b) gives firms the

opportunity to comment on the substance of information that the Commission proposes to disclose. The statute itself requires that the Commission provide only a summary of the information. Accordingly, after complying with section 6(b), the Commission has the right to summarize the information it chooses to disclose without providing the firm a second notice and opportunity to comment. The Commission recognizes that it still must take reasonable steps to assure that the information in the summary is accurate, that disclosure is fair in the circumstances, and that disclosure is reasonably related to effectuating the purposes of one or more of the acts it administers.

(c) *Disclosing Firms' Comments Under FOIA*

One commenter expressed concern about a potential conflict between the Commission's interpretation of the Freedom of Information Act and its statement in § 1101.21(b) that it would notify firms that their comments would be released unless they expressly requested that they be withheld. That commenter noted that the preamble to the proposed rule stated that any Freedom of Information Act request for a manufacturer's comments would be considered under FOIA and section 6(b). The commenter envisioned a situation arising in which a firm's comments could be released in response to an FOIA request even though the firm had specifically requested that the Commission not release the comments. The Commission's response to this comment is discussed in detail in the section of the preamble dealing with reasonable steps to assure that disclosure is fair in the circumstances (§ 1101.33).

Section 1101.22 Timing; Request for Time Extensions.

(a) *Comment Period*

The proposed rule contained provisions that required each firm to furnish comments within 15 calendar days from the date of the letter in which the Commission transmitted the section 6(b) notice to the firm. This time period was adopted to minimize the conflict between the time periods in section 6(b) and those in the FOIA. Section 6(b) provides for a minimum 30 day period before the public disclosure of information, while the FOIA requires the agency to determine whether to comply with the FOIA request within ten days and immediately to notify the requester of that determination. Section 6(b)

affords grounds for withholding documents under Exemption 3 of the FOIA. The Commission therefore believes that the time frames in the proposed rule were necessary to permit the agency to give timely notice to FOIA requesters of its determination under section 6(b).

Industry representatives took the position that 15 days is an inadequate time in which to respond to a section 6(b) request for comments, especially when manufacturers are expected to provide data and technical analyses. These commenters also objected to the time period running from the date of the Commission's letter rather than from the date of the firm's receipt of the letter. Several suggested that the Commission send its notification letters by certified mail to assure that a firm in fact receives the Commission's notification.

The purpose of the section 6(b) notification is to allow firms to provide meaningful comments and, when possible, data on information the Commission proposes to disclose. The Commission agrees that the time frames in the proposed rule sometimes may be too constrictive. Recognizing that the amount of time necessary to furnish meaningful comments will vary depending on the type and amount of information a firm receives, the Commission has revised the final rule in several respects.

First, firms will be provided a minimum of 20 days from the date the Commission sends a section 6(b) notice for comments on a proposed information disclosure, and three additional days for mailing. If a response is due on a weekend or holiday, the time for comment will be extended to the next working day. Second, the Freedom of Information Officer may extend the comment period, particularly for firms receiving voluminous materials. The Freedom of Information Officer may make the decision on his or her initiative or at the request of the firm receiving the material. A firm believing it needs additional time to comment may contact the Freedom of Information Officer directly to work out an acceptable time period without formally requesting an extension.

In adopting this procedure, the Commission rejects the suggestion of several commenters that the time for comment run from the date a return receipt is signed and returned by a firm. In administering section 6(b), the Commission has already encountered several instances in which the return receipt from a certified letter has been delayed for substantial periods of time. In some cases receipts have never been returned. In the Commission's

experience, tying the time for comment to the return of a signed return receipt may encourage delay in responding to a request for comments.

Sections 1101.23 and 1101.25 Providing Less than 30 Days Notice Before Disclosing Information; Notice of Intent to Disclose.

Sections 6(b) (1) and (2) provide that the Commission may reduce the 30 day time period prior to disclosure and the ten day period for notification to firms before Commission disclosure if the Commission makes a finding that the public health and safety requires a shorter period and publishes that finding in the **Federal Register**. The proposed rule contained examples of situations in which a public health and safety finding might be appropriate. These included the example of the Commission attempting to correct inaccurate or misleading product safety information released by third parties or providing the information to a person who would use it for a safety-related purpose within a time limit. The proposed rule also provided that filing the **Federal Register** notice with the Office of Federal Register for publication was sufficient to permit disclosure and that disclosure need not await actual publication in the **Federal Register**.

(a) Correcting Inaccurate or Misleading Information; Providing Information Where There Are Time Limits

Most commenters objected to the two examples in the proposal. Some maintained that firms can take steps to obtain retraction or correction of inaccurate information released by third parties. Others pointed out that the exemption relating to disclosure of information to persons who will use it for a safety-related purpose within a time limit was so vague that it had the potential to nullify the section 6(b) safeguards.

The Commission intended these only as examples of instances in which a public health and safety finding might be triggered. They are not situations in which there would be an automatic finding. Because of the confusion generated by the examples, the Commission has deleted the second example from the final rule and has revised the first. The revised example applies only to situations in which an individual or firm has mischaracterized statements made by the Commission about a specific product. This most commonly might occur when a product is advertised as being endorsed or approved by the Commission.

Should the Commission learn that a firm's product is the subject of an

inaccurate or misleading statement by a third party and that the statement is based on information provided by the Commission, the Commission will notify the third party and the firm whose product has been disparaged and generally will not attempt publicly to correct the information itself. Should the third party refuse to correct or modify its advertising, the Commission will take appropriate action, including referring the matter to the Federal Trade Commission for action under its deceptive advertising authority.

(b) Health and Safety Finding

The Commission has included in the final rule a statement that a public health and safety finding may be appropriate when the Commission seeks to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard. It has, however, not limited the final rule to make this example the sole instance in which a public health and safety finding may be made. Such a determination depends upon the circumstances surrounding specific information disclosures.

In taking this approach, the Commission declines to adopt the suggestions of several commenters that a public health and safety finding is proper only when there is an imminent hazard to health, a substantial product hazard, an immediate risk of serious injury, or some other degree of actual and immediate severe danger to the public. The Commission notes that information concerning products about which the Commission files an imminent hazard action in court or a substantial product hazard administrative action is specifically exempt from the section 6(b) protections. 15 U.S.C. 2055(b)(4). Thus, Congress did not intend to limit the public health and safety finding only to those types of information. The Commission will review all the circumstances associated with a proposed information disclosure, including the degree of danger and foreseeability of potential injury, in determining whether a public health and safety finding is appropriate.

If the Commission decides that a public health and safety finding is appropriate, firms will still receive the opportunity to comment before the Commission discloses the information. The Commission will also notify the manufacturer or private labeler in advance of the date on which the Commission intends to publish the information in the **Federal Register**. Such notice is consistent with section 6(b)(3), which contemplates that firms

will be notified in advance of disclosure to permit them to seek judicial relief. The Commission notes, however, that the legislative history of section 6(b) provides that actual publication in the *Federal Register* is not a prerequisite to disclosure and that filing of the notice is sufficient to permit disclosure.

Section 1101.24 Scope of Comments Commission Seeks.

The proposed rule included a section designed to give guidance to manufacturers and private labelers regarding the types of information they should provide in response to a request for section 6(b) comments to assist the Commission in evaluating the accuracy of information disclosures. The rule suggested that a firm's comments be specific and accompanied by documentation, where available. The proposal noted that comments of a general nature would not be sufficient to assist the Commission in its evaluation of accuracy.

Several commenters objected to an alleged inference in the proposed rule that firms are required by section 6(b)(1) to submit specific information to the Commission. They noted that the Commission, even in the absence of specific information, is required to take reasonable steps to assure the accuracy of information to be disclosed.

The legislative history of section 6(b) clearly shows a Congressional intent that firms provide adequate information to assist the Commission in evaluating issues of accuracy. Thus, while the Commission may not have legal sanctions against firms that fail to provide specific information, such a failure will normally result in a less detailed Commission review than would the receipt of specific comments. The Commission has modified the final rule to reflect this fact.

Several commenters suggested that, if the Commission found a firm's comments too general, the Commission send a second request for more specific information. The Commission believes that this is duplicative and encourages delay by firms that seek to obstruct disclosure. The Commission has, however, revised the final rule to provide clearer guidance in this area. Thus, the final rule states that the weight accorded a firm's response will depend on the specificity and completeness of the comments and any accompanying documentation. The Commission reiterates that even if a firm's comments are too general to be of assistance to the Commission in its evaluation, the agency will independently review the information in order to comply with the section 6(b)

requirements concerning reasonable steps. However, the degree of independent scrutiny by the Commission will be less comprehensive than that which occurs when the Commission receives specific and complete comments.

The Commission also encourages firms to inform the Commission when they are aware of any additional information needed to place the information to be disclose in context and any other consideration they believe relevant to any of the reasonable steps enumerated in section 6(b). For example, disclosure of a technical report may be unfair in the circumstances if the report is one of a series of reports and disclosure of all of the reports is necessary to place the single report in the proper context. Similarly, the fact that an FOIA requester is a competitor of a firm may be relevant to the issue of the fairness of disclosure.

Section 1101.25 Notice of Intent to Disclose.

Nine commenters suggested that when the Commission notifies a firm it intends to disclose information that the manufacturer states is inaccurate, the Commission should explain its reasons to the firm. Some believed that this would ensure that the Commission had properly understood the firm's position, while others contended it would facilitate judicial review. Three commenters went so far as to claim that the Commission's decision to disclose information over a manufacturer's objections is an adjudicatory determination requiring formal findings of fact. Four commenters requested that, at the time of the notice of intent to disclose, the Commission furnish the firm with a copy of everything it intended to disclose, including draft letters to FOIA requesters and any explanatory statements intended to put information into the proper context.

An information disclosure under section 6(b) is not an adjudicatory decision. As a matter of policy, however, the Commission believes it appropriate, where practicable, to furnish a firm with an explanation of the Commission's decision to disclose information over the firm's objections. The final rule has therefore been modified to provide for such an explanation.

In addition, and as a matter of policy, the Commission believes it appropriate for a firm disputing the accuracy of information to receive copies of everything the Commission proposes to disclose in the format the Commission proposes to use. Of course the

Commission usually will have provided almost all of the information to the firm in the initial section 6(b) notification. Accordingly, the Commission will only furnish objecting firms with new materials, such as letters to requesters, explanatory statements, and materials that have been edited to take into account the firm's section 6(b) comments. Thus the firm will have a fair opportunity to assess all the material the Commission intends to disclose, and the Commission will not need to duplicate materials previously provided to the firm.

Section 1101.26 Circumstances When the Commission Does Not Provide Notice and Opportunity to Comment

(a) Notice Not Practicable; Oral Discussions

Section 6(b)(1) of the CPSA requires that "to the extent practicable" manufacturers and private labelers receive notice and the opportunity to comment before the Commission discloses information. The proposed rule listed examples of situations in which notice and the opportunity to comment might not be practicable. These included the inadvertent disclosure of information during an oral discussion at a Commission meeting or at a meeting with outside parties where the substance of the disclosure could not be previously anticipated, disclosure in testimony during litigation or in depositions, and disclosure in response to a subpoena.

Thirteen commenters urged deletion of the provision covering inadvertent disclosures. One noted that disclosures by Commissioners in the course of a meeting could be potentially damaging to firms. Three commenters pointed out that, if the Commission wished to discuss manufacturer-specific information during the course of a meeting, the Commission could simply close the meeting. One also observed that the Commissioners or staff members could be briefed in advance of meetings, thereby eliminating or reducing the possibility of inadvertent disclosures of manufacturer-specific information.

The Commission agrees that both oral and written disclosures are subject to section 6(b) when the information discussed permits the public to ascertain readily the identity of a firm. The Commissioners and the staff are aware that section 6(b) applies to such discussions. Thus, when it becomes apparent that information subject to section 6(b) will be discussed during a

meeting, the Commission closes the meeting.

Because of the erroneous impression left by the inadvertent disclosure provision of the proposed rule, the Commission has deleted it from the final rule.

Ten commenters objected to the statement in the proposed rule that responding to a subpoena or giving testimony during litigation or in depositions would be occasions in which section 6(b) notification might be impracticable. Two contended that any *de facto* exemption for testimony during litigation should be limited only to litigation under the acts the Commission administers.

The Commission included these provisions merely as examples in which compliance with section 6(b) might be impracticable. They were never intended to be blanket exemptions as interpreted by some commenters. When the Commission receives a subpoena or when testimony is taken by deposition in cases to which the Commission is not a party, the Commission believes it would be rare for the agency to be incapable of complying with section 6(b). As some commenters correctly noted, the Commission may move for a protective order or may move to quash a subpoena *duces tecum* or *ad testificandum* in which the information to be elicited identifies the manufacturer or private labeler of a consumer product. In litigation to which the Commission is not a party, the Commission informs the private litigants deposing Commission employees that section 6(b) applies to manufacturer-specific information. It instructs its employees not to answer questions during depositions which elicit such information unless the Commission has complied with section 6(b). Accordingly, to avoid confusion, the Commission has deleted the examples concerning subpoenas and depositions. The determination of impracticability will, however, have to be made on a case-by-case basis.

If the Commission receives a subpoena issued in litigation to which the agency is not a party and if the Commission elects not to move to quash the subpoena, the Commission intends to file the responsive information under seal with the court issuing the subpoena, along with an explanation that the Commission has not released the information to the requesting party because it has not yet complied with section 6(b). This will permit the court to determine that action is appropriate without engaging the Commission in needless litigation to quash the subpoena on section 6(b) grounds. To initiate the section 6(b) process for

subpoenaed information, the Commission also intends to transmit the subpoenaed information to the manufacturer, if it has not previously done so, at the same time it files the information under seal with the court. If the manufacturer is a party to the litigation in which the subpoena is issued, the opposing party may seek a routine discovery, thereby alleviating some necessity for the Commission's involuntary involvement in that suit.

Oral testimony during litigation to which the Commission is not a party presents a different type of problem. The Commission intends to comply with the requirements of section 6(b) when oral testimony is taken in such cases, to the extent permitted by the court. However, situations arise in which compliance with section 6(b) could subject a Commission employee to contempt for failure to obey an order of the court to give specific testimony. On such occasions it would be impracticable for the Commission to comply with section 6(b). The final rule has been revised to reflect this limited exception.

Section 1101.31 General Requirements

Subpart D of the proposed rule discussed in detail the reasonable steps that the Commission believes are adequate to assure that the information it discloses is accurate, that disclosure is fair in the circumstances, and that disclosure is reasonably related to effectuating the purposes of the acts it administers. Section 1101.31 of the preamble to the discussion of the reasonable steps, discussed generally the requirements which the Commission believed section 6(b) imposes on it in this area.

(a) Release of Summaries of Manufacturers' Comments

Proposed § 1101.31(b) stated that, in disclosing information, the Commission would include the comments of manufacturers or private labelers unless those parties specifically requested the Commission not to include the comments or to include only a designated portion of the comments. One commenter suggested that in the interest of fairness, the Commission should always withhold such comments, absent a specific authorization from the firm to disclose them. The Commission's response to this comment can be found in the section of the preamble discussing § 1101.33, Steps to Assure that Disclosure is Fair in the Circumstances, and will not be repeated here.

(b) Explanatory Statements

Section 1101.31(c) states that, where appropriate, the Commission will

accompany the disclosure of information with an explanatory statement that makes the nature of the information clear to the public and that, to the extent practicable, the Commission will accompany the disclosure with any other relevant information in its possession necessary to place the released information in context. Two commenters wanted the final rule changed to make clear that the explanatory statement is not a substitute for the reasonable steps to assure accuracy. These commenters were concerned that the Commission might release information that it had not taken reasonable steps to assure it was accurate and would avoid its section 6(b) obligation by simply including an explanatory statement that the Commission had not taken such a reasonable step. One commenter also noted that disclosure under these circumstances would not be fair.

The Commission never intended to use the explanatory statement instead of taking reasonable steps to assure accuracy. The Commission has revised the final rule to make this clear.

Two commenters suggested that all explanatory statements and other relevant data be provided to the firm for comment. As a matter of policy, the Commission believes it is appropriate, when the accuracy of information is disputed, to furnish such information to firms. Therefore, insofar as it is practical, the Commission will follow this procedure.

One manufacturer suggested that explanatory statements and additional information accompany disclosure in all cases, not just those where it is appropriate or practicable. The Commission believes that this suggestion misconstrues the intention of the Commission, and it declines to adopt this recommendation. There may be situations in which an explanatory statement is unnecessary to place the material in context and thus would be inappropriate. Furthermore, since the Commission has many data bases and sources of information, it cannot and does not conduct an exhaustive search of headquarters and regional office files to assure that every piece of information germane to a proposed information disclosure is included.

One commenter suggested that, when the Commission proposes to release a summary of a firm's comments, the summary be prepared by the firm and not by the Commission staff. This issue was discussed above with respect to § 1101.21 of the rule.

(c) Requests for Identical Information

Proposed § 1101.31(d) stated that, if the Commission had previously disclosed the identical information that it intends to disclose again, it would not customarily take additional steps to assure the accuracy of the information absent some reason to question its accuracy. Four commenters contended that section 6(b) requires the agency to give notice to the firm each time it proposes to disclose the information. One commenter suggested that the Commission qualify the rule and give section 6(b) notice if the manufacturer or private labeler requests it, if there has been a considerable lapse of the time (for example, three years), or if the Commission itself identifies some factor that would warrant requesting section 6(b) comments again. The Commission concurs with the latter view, with some qualifications.

The Commission frequently receives multiple requests for the same material in a very short time span. At present, the Commission generally complies with section 6(b) for each of these requests. However, this process has dissatisfied firms that repeatedly receive the same material and has imposed a significant burden on the Commission staff with no discernable benefit to the manufacturers. It is in the interest of the manufacturing community and the Commission to conserve the resources of both parties necessary to process such multiple requests. Accordingly, at the time a firm receives the initial section 6(b) notification, the notice will inform the manufacturer that requests for identical information will be processed without further notice to the firm unless the firm specifically requests section 6(b) notice for subsequent disclosures. However, if the Commission itself identifies something that warrants soliciting further section 6(b) comments, the Commission will submit the previously disclosed information to the manufacturer for comment, even though a prior disclosure has taken place in accordance with section 6(b). Thus, the circumstances under which the Commission might fail to provide section 6(b) notice and opportunity to comment for identical information disclosures are limited solely to cases in which firms waive their right to provide additional comment and analysis.

(d) Format of disclosure

One commenter did not oppose the provisions of § 1101.31(d), but requested that the exception apply only to information released in a format identical to that in which the Commission previously disclosed the

information. The Commission agrees in part with this comment, since the format of the disclosure (other than summaries of information previously released) or the intended audience may be of significant interest to the firm and may warrant comment. The Commission has therefore revised the final rule to reflect this change.

*Section 1101.32 Reasonable Steps to Assure Information Is Accurate.**(a) General*

Section 1101.32 of the proposed rule set forth certain measures that the Commission believes constitute reasonable steps to assure the accuracy of information. Listed among these were activities performed by the Commission staff or by qualified outside parties that by their nature gave a reasonable assurance that the information generated by the activities was accurate. (For example, an in-depth investigation conducted by a trained Commission investigator in accordance with agency guidelines and directives and laboratory testing performed by qualified engineering or toxicological personnel in accordance with recognized methods.) Thus, when the information to be disclosed is the product of such an activity, the Commission believes it has satisfied the statutory mandate to take reasonable steps to assure accuracy. To comply with section 6(b), the agency will not, therefore, perform a second investigation or second test to verify the accuracy of the original investigation or test results. The Commission believes that following the latter process is clearly beyond the requirements of section 6(b).

The Commission, however, will evaluate the information in light of its own experience and technical expertise and in light of the comments submitted by firms.

The proposed rule treated information developed by qualified outside parties in the same fashion. If, for example, the Commission obtained a fire investigation report performed by a fire department official or received a report summarizing the results of testing performed by an outside laboratory, the Commission would not then perform its own investigation or testing to confirm the accuracy of the information. However, the Commission staff would review the reports in light of its experience and expertise to ascertain whether the investigatory methods or testing techniques were reasonable in the circumstances and whether the person doing the testing or submitting the report was qualified to do so. Such

scrutiny usually occurs when the staff receives the information, rather than at the time the Commission proposes to release it, although it is reviewed at the time of release.

Many commenters stated that simply because a Commission staff member with the requisite training and qualifications operating in accordance with specific directives or protocols performed an activity that generated the information to be disclosed did not mean that the Commission had taken reasonable steps to assure the accuracy of information. These commenters also objected to the Commission's treatment of an outside investigation conducted by a qualified party as a reasonable step to assure accuracy. While the commenters did not identify precisely what they would regard as a reasonable step to assure accuracy, the general thrust of their comments was to require the Commission to do a second investigation or second test to confirm the accuracy of the original information.

The Commission believes that these commenters have misinterpreted the requirements of section 6(b). Nowhere in the statute is there an indication that the Commission must *guarantee* the accuracy of information it proposes to disclose. The Commission is only required to take *reasonable steps*. To follow the process implied by the commenters would impose a standard inconsistent with the language of the statute and its legislative history.

The Commission's analysis of a firm's comments on information, coupled with the Commission's independent review of the material and the fact that the information was generated by an activity that provides an assurance of accuracy, is more than adequate to meet the reasonable step to assure accuracy requirement. The Commission notes that the degree of independent scrutiny that an individual document receives will, in large part, depend on the nature of the document itself; on the specificity and the completeness of the firm's comments; and on the data accompanying those comments.

(b) Investigation by non-CPSC Employees

Several commenters made specific reference to investigations conducted by qualified personnel outside the Commission. One wanted to exclude from disclosure all information prepared by anyone with a significant commercial interest in the information. The Commission finds no basis in the statute for this position. The fact that a person has such an interest does not necessarily call into question the

accuracy of the data or information he or she has prepared. Of course, a firm is free to note in its comments that the preparer has such an interest. Under some circumstances it may be appropriate for the Commission to accompany disclosure with an explanatory statement to that effect.

One commenter suggested that qualified outside parties who give opinions be required to execute affidavits setting forth the opinions and facts upon which their opinions are based. Under this commenter's approach, the information sent to the manufacturer for comment would not be the technical report or investigation report prepared by the individual but the affidavit. The Commission believes that this approach goes far beyond anything contemplated by section 6(b). Section 6(b) neither requires the Commission to create documents nor imposes a trial standard on the Commission by permitting the disclosure of information only when attested to under penalty or perjury. All that section 6(b) requires is that the Commission take reasonable steps to assure accuracy.

(c) Independent Review of Information

One manufacturer's association submitted extensive comments on proposed § 1101.32. This commenter envisioned firms playing an active role in assisting Commission review through their comments. With respect to documents generated by Commission employees or by persons outside the Commission, it suggested that these be reviewed independently within the agency. As the standard of review, the commenter proposed that the scope of such an inquiry would depend upon the nature of the document; upon the need to clarify the information contained in the document and the circumstances of its preparation; upon the existence of other Commission documents relating to the product in question; and upon the qualifications and expertise of the person preparing the documents.

The Commission notes that these criteria are generally consistent with the current practice of the Commission and with the procedures set out in the proposal. Upon receipt, members of the Commission staff routinely review and analyze such information. The Commission believes that the initial review alleviates the necessity for performing the second review suggested by the commenter. The Commission will, however, undertake further review of such information when it receives specific comments that call into question the accuracy of the information.

(d) Criteria for Evaluation of Accuracy

The same commenter also proposed that documents containing undocumented or unsupported conclusions or assertions or containing information superseded by more recent information, refuted by other information in the Commission's files, rejected by the Commission itself, or inconsistent with Commission positions and policies not be released. Further, with respect to documents prepared by parties outside the agency, the commenter suggested that information not be released if the preparer is unqualified to reach the conclusions or if the information is not based on generally accepted methods of analysis and evaluation.

The Commission agrees in part with this comment. Thus, except as discussed below, the Commission will not disclose undocumented or unsupported information, information refuted by other information in the Commission files, or information rejected by the Commission itself. Detailed comments from firms may be quite helpful in evaluating whether persons outside the Commission lacked the necessary qualifications to draw conclusions and whether the information is based on methods of analyses which are reasonable.

However, if information is simply superseded and not contradicted by more recent documents, the Commission will release all relevant material to permit the recipient to evaluate the information fully. Further, the fact that a document may be inconsistent with the Commission's current position or policy regarding the subject discussed in the document will not necessarily bar disclosure. A document may be completely accurate and still be inconsistent with Commission policy. In such a case the thrust of the Commission's examination would be towards ascertaining whether disclosure is fair in the circumstances and whether disclosure of the information in the proper context would be appropriate.

One trade association suggested that the Commission clarify the regulation to indicate that all documents and all statements whose contents are subject to factual verification are subject to section 6(b). This commenter correctly recognized that legal opinion and information of that nature are not susceptible to review for accuracy. The Commission agrees insofar as the information readily permits the public to ascertain the identity of a specific manufacturer and has clarified the regulation accordingly.

(e) Preliminary Hazard Determinations

One commenter suggested as a definition of a reasonable step to assure accuracy: "that level of objective checking which is appropriate to the seriousness of the complaint." This commenter suggested that the more serious an allegation in a complaint, the more active the Commission's investigation should be. To the extent the comment suggests that the more serious a problem identified, the more reasonable steps the Commission must take, the Commission disagrees. As a practical matter, however, virtually all Commission activities are designed to respond to and to evaluate the seriousness of potential hazards that come to its attention. For example, an explosion hazard, if sufficiently serious, typically becomes the subject of laboratory studies, in-depth investigations, and activities of that nature. An allegation, however, that a product emitted a strange odor may never be subject to investigation, absent an indication of a health hazard. Inasmuch as the daily activities of the Commission comport with the comment, the Commission's position that such activities are in themselves reasonable steps to assure accuracy is consistent with that comment.

The same commenter made comments on the method of evaluating preliminary hazard determinations under section 15 of the CPSA. The commenter suggested that the Commission not disclose preliminary determinations of substantial product hazards made by the enforcement staff unless (1) the Commission has made a formal determination of the existence of a substantial product hazard following an opportunity for an adjudicative hearing under section 15 of the CPSA or (2) the preliminary determination is supported by identifiable evidence such as test data, accident reports, or engineering analyses. The commenter further suggested that, even if a preliminary determination was supported by such evidence, it should not be released when the firm has provided the agency with credible and concrete evidence that calls into question the accuracy of the staff's determination.

The Commission agrees with the basic proposition that a preliminary hazard determination is an opinion that must be supported by factual evidence if it is to be disclosed. The Commission also agrees that when a manufacturer or private labeler submits concrete evidence and data that call into question the accuracy of the staff's preliminary determination, it may be appropriate to

withhold the staff's conclusions. There may be a narrow category of cases in which a staff preliminary determination supported by expert opinion based on the performance of tests and analysis of data is disputed by a firm's comments containing material prepared by an opposing expert. In such a case, the Commission does not believe that the existence of the opposing opinion is sufficient in itself to bar release of the staff determination, absent specific comments demonstrating factual inaccuracies in the tests or analysis supporting the determination. In the interest of fairness and to permit the recipient to understand fully the nature of the information, the Commission would disclose both expert opinions, their supporting data and appropriate explanatory statements.

(f) Materials From Private Litigation

One commenter took the position that materials derived from private litigation should not be released unless the Commission takes reasonable steps to confirm their accuracy. For example, it objected to disclosure of the report of an expert witness in the absence of a Commission evaluation confirming the conclusions and analysis of the expert. Further, under this approach, the Commission would not disclose the testimony of an accident victim unless the Commission were familiar with the entire litigation record and the testimony was neither disputed by other evidence in the record nor challenged by the product manufacturer. As justification for this strict position, the commenter contended that the theories and assertions embodied in litigation materials reflect the biases of litigants with a vested interest in advancing a specific point of view. It also pointed out that the conclusions of witnesses or technical experts may be sharply disputed during the course of trial. The commenter feared that if a case were settled before resolution on its merits, conflicts in testimony would remain unresolved and there would be no obvious basis for accepting one litigant's position and rejecting that of the other. The commenter also expressed concern that transcripts of testimony might, at some stage, become isolated from the remainder of the litigation record, thereby causing an unsuspecting reader not to question their accuracy. Finally, it was concerned that recipients of the information would view disclosure by the Commission as giving a Commission imprimatur to the veracity of the information.

At the crux of these comments is the premise that, to release information from private litigation, the Commission

must conclude that one litigant's position is more correct than that of his or her adversary. This goes too far. The Commission believes a sounder approach is to analyze private litigation material in the same manner as it analyzes other information under section 6(b). For example, the Commission will analyze an expert's report to ascertain whether the methodology is professionally acceptable. It will consider whether opinions in the report are supported by appropriate factual data; it will scrutinize the qualifications of the expert; and it will solicit and take into account the manufacturer's comments. Should the manufacturer choose to submit the entire litigation record or desire the Commission to point out that material is or was the subject of a dispute, the Commission will release the entire litigation record or include an appropriate explanatory statement.

The Commission notes that it is incapable of controlling how people handle information after it is disclosed. If a recipient of a document chooses to isolate a segment or even a sentence of a document, the Commission has no control over such conduct, regardless of whether the document was prepared for private litigation or for one of the Commission's regulatory activities. In contrast to information which the Commission affirmatively disseminates, a passive disclosure (such as that resulting from a Freedom of Information Act request) cannot be construed as carrying the agency's endorsement of the information contained therein. Rather than refusing to disclose such information because of the possibility that it might be misconstrued, it is more appropriate to include with the disclosure an explanation setting forth the Commission's neutrality in the matter.

(g) Weight Accorded Firm's Comments

A trade association proposed that the weight which the Commission affords a manufacturer's comments should depend on the specificity, completeness, and credibility of the comments and supporting documentation. The Commission agrees with this general principle and has incorporated it into the final rule. The final rule, however, does not go as far as the commenter desired in this area.

The commenter suggested that, where a firm presents documented, well-reasoned objections to conclusions, observations, analyses test data and other information, the Commission not disclose the information unless its accuracy has been recognized by the Commission in formal findings adopted

in a rulemaking or adjudicative proceeding.

The Commission believes that the commenter's proposal goes beyond the safeguards contained in section 6(b). When taken literally, the commenter's contention that, to be disclosed, disputed information must be the subject of formal consideration by the Commission is inconsistent with the statutory exceptions to section 6(b) contained in section 6(b)(4). Under that section, information disclosed in the course of or concerning rulemaking and adjudicatory proceedings is exempt from the notice and comment requirements of section 6(b) regardless of accuracy. To require the Commission to recognize the accuracy of information by means of an administrative or judicial proceeding before it can be disclosed renders negatory the statutory exception, of section 6(b)(4).

In a more limited application, however, the Commission agrees that it will often be inappropriate to disclose information when comments and supporting documents specifically call into question the accuracy of information. When the indicia of accuracy of the information are as reliable as those provided by the manufacturer in its comments, the Commission believes it appropriate to release all of the information at issue with an explanatory statement noting the manufacturer's objection or contention.

(h) Staff Review of Technical Comments

A manufacturer's association suggested that when the Commission receives technical comments from a manufacturer in response to a section 6(b) notice, the agency should have it reviewed by a knowledgeable, technically qualified, and unbiased individual who did not participate in preparing the information whose accuracy is at issue.

The Commission agrees in part with this comment. The Commission technical staff routinely evaluates technical comments submitted by firms. To the extent practicable, the individuals who review this material are trained or possess sufficient experience to make a careful and reasoned evaluation. Further, where necessary the Commission encourages the technical staff evaluating comments to communicate with the firm to gain a better understanding of its concerns.

The Commission does not believe, however, that a technical person's participation in preparing document or study disqualifies that person from evaluating the material in light of the

manufacturer's comments. On many occasions, the only person in the Commission with the expertise to perform such an evaluation is the person who prepared the information in the first instance. Indeed, it is illogical for the Commission not to assign a person with expertise in a specific subject matter to a project involving that subject matter. Accordingly, the Commission declines to adopt the suggestion that staff be automatically disqualified from reviewing information they prepared, since this could result in a substantial inability within the agency to review many documents for accuracy.

(i) *Review of Qualifications of Agency Employees*

One commenter suggested amending the proposed rule to require the Commission first to determine that the author of an agency-originated investigation or inspection report is qualified to provide authoritative comment on each substantive area contained in the report. The commenter suggested that a detailed check of the employee's personnel record could achieve this result. If that check was not adequate to ascertain the author's qualifications, the commenter would have the Commission take additional steps to assure accuracy.

In the Commission's opinion, this approach goes beyond the mandate and purpose of section 6(b). The structure of the Commission's organization dictates that assignments be given to qualified individuals. The process of hiring and assignment within the agency in itself gives an assurance that the author of a document is qualified to perform the tests or to make the observations contained therein.

The Commission notes, however, that to be released, all observations capable of factual verification must indicate the bases upon which they are made. Unsubstantiated statements or opinions generally will not be disclosed. Thus, in the case of a Commission field investigation, the facts of an incident will be disclosable. Speculation as to the cause of an accident or the existence of a defect will not customarily be disclosed unless the investigator has the independent expertise and factual basis for making the observations or the observations are the product of an evaluation, supported by factual evidence, conducted by some other qualified person.

(j) *Corroboration of Information to be Disclosed*

Under the proposed rule one reasonable step to assure accuracy was to conduct an investigation or obtain a

technical, scientific or other evaluation that corroborated the product information to be disclosed. Such an investigation or evaluation could be performed either by the Commission staff or by qualified outside parties. As an example, if the Commission received a number of reports that a chemical cleaning product had burned consumers as they used the product, the Commission might test the product for corrosiveness. If the test results showed the product to be corrosive, those results might corroborate the reports of burns.

(1) *Definition of Corroboration.* One commenter suggested that the term "corroborate" be dropped or, in the alternative, that corroborative detail be factual and not just suggestive of credibility. The Commission agrees with the latter point, recognizing that the issue of what is adequate corroboration must be evaluated on a case-by-case basis. The Commission believes that a firm will have ample opportunity to comment on the corroborative value of a given study or an investigation when it furnishes comments pursuant to section 6(b) or when it receives ten days notice prior to disclosure of information.

(2) *Corroboration by Investigation.* Three commenters discussed issues involving corroboration by an investigation. One suggested that an unconfirmed product complaint could be released only if the Commission had corroborated the information contained in it and the firm did not object to release. The Commission believes that a corroborating investigation or technical study is a sufficient reasonable step to satisfy the criterion of section 6(b) concerning accuracy. The firm's rights are protected by its opportunity to comment and provide explanatory data. The suggestion that such information only be released if the firm does not object to disclosure goes far beyond the statute and therefore has not been adopted.

Two commenters expressed concern about the potential biases of non-CPSC employees who have performed studies used to corroborate information subject to section 6(b). One suggested that no person with a significant commercial interest in the information should be permitted to corroborate information.

When the Commission receives the reports of investigations or testing performed by non-Commission employees, it routinely assigns its technical staff to evaluate these reports to assure that the methodology used and circumstances surrounding the tests or investigations are adequate to assure that the observations and conclusions, if any, are accurate and based on scientifically accepted procedures or

other safeguards. This process, in itself, provides an assurance of the reliability of the information should it later be used to corroborate the contents of a product complaint, for example. The Commission notes, however, that it rarely has any way to determine the biases or commercial interests, if any, that the preparer might have in the information. It further notes that the existence of a commercial interest would not, in itself, justify withholding a document on accuracy grounds.

(k) *Solicitation of Manufacturer's Opinion of Steps Necessary to Assure Accuracy*

One commenter suggested that to meet the requirement of taking reasonable steps to assure accuracy, the Commission solicit from the manufacturer of the product identified in the information a description of those steps which the firm believes appropriate to verify the accuracy of the information. The Commission believes that its approach is consistent with this comment because the opportunity for a firm to comment in effect allows the firm to advise the Commission of the steps the firm believes are reasonable to assure the accuracy of the information. While the response will often be couched in the negative (*i.e.*, the firm will dispute the adequacy of the steps taken or the accuracy of the information to be disclosed for a variety of reasons), the dispute itself often defines what the firm believes the requisite steps are. If the firm's comments have merit, the Commission is free to conduct additional research or investigation if appropriate or to withhold the information. However, the Commission will not typically solicit firms' recommendations of what steps the agency must take to assure accuracy.

(l) *In-Depth Investigation Reports*

One commenter expressed concern about the disclosure of the Commission's in-depth investigation reports. This commenter stated that in-depth investigation reports frequently contain uninformed opinion about product design and manufacturing processes and pure speculation about injury patterns and product-associated risks. The Commission agrees that it should excise unsubstantiated opinion and speculation from investigation reports prior to public disclosure. The Commission will attempt independently to evaluate reports so as not to disclose unsupported conjecture. However, a firm's comments may provide the only means by which the Commission can ascertain whether information

concerning manufacturing processes and quality assurance procedures is accurate.

(m) Product Complaints

Section 1101.32(a)(3) discussed the procedures the Commission proposed as reasonable steps to assure the accuracy of uninvestigated product complaints or those not substantiated by testing or other technical data. The proposal contemplated three separate elements in the test for accuracy.

(1) *Confirmation.* The Commission proposed to send each complaint back to the complainant with a request that the complainant review it; make corrections or additions to the information, if necessary; and confirm in writing that the information was true and accurate to the best of the complainant's knowledge and belief. The Commission would not disclose a complaint without confirmation unless an investigation or scientific or technical analysis corroborated the complaint. In addition, a confirmation would only be valid if made by a person with first-hand knowledge of the complaint's contents. (Incidents involving young children could be confirmed by the parent or temporary guardian of the child.)

(2) *Transmittal of Complaints to Identified Firms.* While not required to do so by section 6(b), the Commission proposed to send complaints to manufacturers when the Commission receives them. This procedure would also follow the legislative history of section 5 of the CPSA which indicates the Commission is to transmit to manufacturers safety-related information regarding their products. This "early warning" type of notification permits manufacturers to investigate complaints; to make a timely assessment of any potential hazards; and to take remedial action, if appropriate. It also helps a manufacturer who subsequently receives a request for section 6(b) comments on the complaint to make an informed comment.

(3) *Independent Review of Complaints.* The Commission proposed to review complaints independently. The degree of scrutiny depends on the specificity and extent of the firm's comments. Whether or not a firm commented, the Commission proposed to review the complaint's contents to assure that nothing on the face of the complaint raised a question of accuracy.

The provisions of the proposed rule concerning complaints elicited much comment and controversy. Generally, there were two schools of thought. Consumer groups and some manufacturer organizations supported

the confirmation process as a reasonable step to assure accuracy. Some commenters, particularly affected industry, expressed reservations or suggested alterations.

(n) Industry Approaches to Product Complaints

The great majority of industry commenters opposed the confirmation process but expressed two different points of view. One group of commenters opposed the release of any product complaint unless the complaint was the subject of an in-depth investigation or was corroborated by an adequate technical evaluation performed by a trained person. In essence, this group of commenters claimed that section 6(b) requires the Commission to conduct a formal investigation of a complaint before it can be released.

The other group suggested that the Commission use the expertise of firms in deciding whether to release complaints. Under this approach, the Commission would forward a complaint to the manufacturer of the product in question. The manufacturer would then be free to investigate the complaint and forward its results to the Commission, to provide data or a technical analysis regarding the allegations contained in the complaint, or to point out ambiguities and other discrepancies in the complaint. If the Commission desired to release the material, it would be obligated to contact the complainant to obtain answers to any questions raised by the manufacturer.

The issue of the disclosure of product complaints is a matter of statutory interpretation. Those commenters who state that the Commission cannot release a complaint unless it has performed an investigation or technical analysis in effect argue that Congress intended the Commission to establish to a certainty the accuracy of information it releases, whether or not a firm chooses to participate in the disclosure process by providing comments. On the other hand, the approach taken by the other group envisions some level of independent review by the Commission to assure accuracy, but also gives effect to those provisions of section 6(b) which contemplate active participation by the manufacturer in a decision whether to disclose information. The Commission believes that the latter, with some modification, is a better view and more closely comports with the letter and spirit of section 6(b). The comments are discussed in detail below.

(1) *Confirmation.* Almost half the industry commenters objected to confirmation as a reasonable step to

assure accuracy. The commenters expressed a variety of concerns. Some asserted that information reported by consumers was too subjective while others feared that, absent investigation or technical evaluation, a complaint might subsequently be misused by a person who acquired it from the Commission. Several stated that complaints often contain inaccurate information or are trivial in nature. Others feared that complainants might submit false information to the Commission or file complaints to generate leverage against a manufacturer. Many expressed doubt that confirmation would be effective, claiming that consumers are untrained and too biased to make objective and accurate reports. Others speculated that, with the passage of time, consumers would not be able to provide additional information or provide intelligent confirmation.

Few commenters were able to give concrete examples to support their objections. More important, however, many commenters assumed that every product complaint attributes the cause of an incident to a defect in a product. This fear inspired many of the objections to the confirmation process because the companies feared that releasing an opinion of an untrained consumer attributing the cause of an incident to a defect would subject a product to unjust disparagement.

It is the Commission's view that these fears are unfounded. In the agency's experience, consumers report incidents rather than defects. The great majority of product complaints contain the experiences of consumers or identify potential problems with products that consumers have personally observed. It is true that occasionally a consumer may attribute an incident to a cause or specific defect. The confirmation process, however, is not designed to authenticate that type of information. Rather it is designed as a step to assure the accuracy of factual information by giving the consumer the opportunity to read carefully the information he or she previously submitted to the Commission in light of a request by the government that the consumer review and correct or add to that information, if appropriate. The requirement that the complainant sign and acknowledge the document as true and accurate to the best of his or her belief is designed to impress on consumers the importance of providing accurate information and to encourage them to reflect on the information before returning the signed confirmation to the Commission.

The confirmation process was not intended to result in the wholesale release of information, such as opinions about defects and causation. Such information would only be released if there was a factual basis for the opinion and the consumer was qualified to draw the conclusion. If for example, a consumer attributed a fire in a stove to a defective heating element and there was no factual basis for the statement, and no indication in the complaint that the consumer had the expertise to make that evaluation, or that someone with the requisite expertise had made such an evaluation, as a result of its independent review the Commission would withhold that opinion from the information to be disclosed.

The Commission believes that confirmation is a reasonable step to assure accuracy for a variety of reasons. It has been the agency's experience that consumers generally report incidents accurately. In ten years of conducting in-depth investigations and in the course of litigation the Commission has followed up many complaints. In almost every instance the information initially reported to the Commission proved to be substantially correct upon follow-up. The Commission's experience is identical to that of consumer organizations which, in their comments, pointed out that in their experience complaints were generally accurate, valid, and could be indicative of a hazard. Industry commenters were unable to contradict this experience and failed to provide examples that indicate that consumer complaints are generally so inaccurate or inherently biased that independent investigation or analysis is necessary to assure their accuracy before disclosure.

In February of 1983, the Commission staff conducted a pilot program to determine whether confirmation would be an effective step in complaint handling. The agency returned approximately 500 telephonic reports of complaints and 120 written complaints to the complainants with a request that they read the complaint, make any necessary corrections and additions, and return it signed to the Commission.

The response to the pilot program indicates that consumers do indeed take the time to review the information they submit to the Commission and to edit it where necessary. Almost 55 percent of the complaints were returned to the Commission. Approximately 85 percent of these contained corrections and additions ranging from the correction of typographical and spelling errors to providing diagrams, samples of labels, and even samples of products that were

the subjects of complaints. When corrections were necessary to make information more accurate, consumers made those corrections. Most corrections were, however, of a minor nature. In some cases, the complainants provided the Commission with additional information concerning the corrective actions taken, subsequent experiences with the same product, or the manufacturer's handling of a particular complaint. The Commission believes the results of the pilot project establish the validity of the confirmation process as a reasonable step to assure accuracy and since April 1, 1983, has been obtaining confirmation of complaints as a permanent part of its complaint handling process. Since April 1, 1983, approximately 93 percent of all complaints sent for confirmation have been confirmed.

(2) *Sworn Statements.* A few commenters suggested that the Commission require confirmations to be sworn under oath or submitted in the form of an affidavit. The Commission does not believe that the evidentiary standards applicable to the presentation of evidence at trial govern the section 6(b) reasonable steps to assure accuracy. The Commission's pilot program and the ongoing program since April 1, 1983, to obtain consumer confirmations indicate that the process is an effective and reasonable step to assure accuracy. There is no indication that requiring a statement to be sworn to or notarized (as opposed to the current requirement that complainants acknowledge information to be true and accurate to the best of their knowledge and belief) will significantly increase the accuracy of information contained in complaints. Indeed, requiring a sworn statement might discourage consumer response thus leaving uncorrected information in the Commission's files. Under the current confirmation process, that information is corrected. The Commission therefore declines to adopt this suggestion.

(3) *Notice of Complaints to Manufacturers.* As stated earlier, the Commission recognizes that confirmation itself is not the sole reasonable step to assure accuracy that would justify disclosure. In the proposed rule, the Commission proposed to undertake an independent review of the information. The agency anticipated that receiving specific substantive comments from firms would enhance this review. To facilitate this process the Commission now sends virtually all confirmed and unconfirmed complaints to any identifiable manufacturer, thus permitting the manufacturer to conduct

whatever follow up or analysis it finds appropriate. The Commission believes that if a firm subsequently receives a request for section 6(b) comments on the information, the firm will be better able to furnish detailed substantive comment on the accuracy of the information contained in the complaint. The Commission also anticipates that the manufacturer will often have resolved the problem expressed in the complaint to the satisfaction of the consumer before receiving a request for section 6(b) comments. This fact would be reflected in the manufacturer's comments. Depending on the circumstances, this may result either in withholding the information in the complaint because it is inaccurate or in disclosing the information with a statement describing the successful resolution of the problem.

(4) *Transmittal of Manufacturer's Questions to Consumers.* As indicated above, a trade association suggested that a firm be permitted to provide questions about the completeness, correctness, or plausibility of a complaint. The Commission would then be obligated to transmit the questions to the consumer. A second commenter stated that if a firm commented on the accuracy of information in a complaint, the Commission should force the complainant to respond to the firm's comments.

In many instances specific complaints are not of sufficient interest to the agency to justify following them up. The Commission believes that it would be counter-productive to spend the time and resources necessary to engage in this practice solely to compile the type of file a manufacturer believes desirable under section 6(b). If the Commission receives a manufacturer's comment raising questions about completeness, correctness, or plausibility of a complaint, the final rule gives the agency the discretion to contact the complainant, although the Commission anticipates that it would rarely do so. Should the Commission choose not to transmit the questions, it will evaluate the accuracy of the complaint in light of the questions raised by the firm's comments.

(5) *Requiring That Substantiating Data Accompany Complaints.* One commenter suggested that the Commission require complainants to submit all data substantiating their complaints. The Commission notes that it has no control over what a complainant submits. In the absence of supporting data, the Commission will evaluate the material in light of the firm's comments and according to the

procedures of the final rule. The lack of supporting data may, however, result in the withholding of a product complaint whose accuracy is challenged by a firm, especially where the firm's comments are specific and accompanied by relevant documentation.

(6) *Independent Review in the Absence of Comments.* One commenter suggested that even in the absence of comments from a firm, the Commission has an independent obligation under section 6(b) to assess the accuracy of the information contained in product complaints. The Commission agrees with this proposition. Of course this does not mean that the agency must search its files and direct inquiries to knowledgeable employees to determine whether a complaint is accurate. The Commission considers confirmation by an eyewitness to be a reasonable step to assure accuracy under section 6(b). However, the Commission will also review the complaint to determine whether there are inconsistencies on its face and will delete statements of opinion or belief that are not based upon fact or investigation.

The commenter also suggested that in the absence of comments by a firm, the Commission take steps to assure that the information in a complaint is not inconsistent with other information in the Commission's possession. The Commission believes that this is unreasonable, especially in light of the confirmation procedures and advance notice to manufacturers. Under the commenter's approach, the Commission would have to conduct an exhaustive search of the agency's files every time it receives a request for a complaint.

(7) *Failure of a Complaint to Specify Product Causation.* Noting that product involvement in an incident does not mean the product caused an injury, one commenter suggested that a complaint could only be disclosed if the product in issue had caused or could cause or contribute to an injury. The Commission believes that this is a question of fairness rather than accuracy. If a report of an incident is factually accurate, the fact that it fails to contain some determination concerning causation does not make the report inaccurate.

(8) *Disclaimer of Commission Endorsement of a Complaint.* Two commenters suggested that if a confirmed complaint is disclosed, the Commission should add an explanatory statement indicating that the complaint contained the observations of an individual and did not reflect endorsement or analysis by the Commission. The disclosure of a complaint does not, in itself, represent endorsement by the Commission,

especially when disclosure is in response to an FOIA request. The Commission, however, considers this issue on a case-by-case basis when it takes the reasonable steps to assure the fairness of disclosure under the circumstances.

(9) *Parent Confirmation of Incidents Involving Children.* A few commenters objected to permitting confirmation by the parent or guardian of a child involved in an incident or by a person to whom the child was entrusted on a temporary basis. The basis for this objection was that the parents or guardians themselves were not witnesses to the incident involving the child and thus lacked first-hand knowledge of the events described in the complaint.

Many incidents involving children occur when they are not being directly observed by an adult. Thus, the only individual with first-hand knowledge who would be able to confirm a complaint is the child. It may be impossible for a young child to appreciate the seriousness of the confirmation or the necessity that information be factually correct and complete. The Commission believes that the relationship of the parent or temporary custodian and child is such that children accurately inform their parents or guardians about incidents. Similarly, having the parent confirm the complaint will encourage the parent to discuss the matter with the child more fully to assure that the information in the complaint is accurate. Therefore, while it is true that a parent or guardian may not be an eyewitness to an incident, the Commission believes that the unique circumstances surrounding incidents involving children justify this limited exception to the requirement that confirmations be given by persons with first-hand knowledge. As with all complaints, firms will receive confirmed complaints involving children at an early stage to enable them to investigate and will have the statutory right to submit comments on the accuracy of the complaint when the Commission proposes to disclose it.

Taking any position other than that contained in the final rule would in effect deny the public access to almost all complaints about incidents involving small children. The Commission believes this would not be in the public interest because small children comprise a class of consumers who are least able to protect themselves and deserving of extra attention. Dissemination of information about incidents involving children has the potential to encourage improvements in the safety of children's products and therefore to protect that

particularly vulnerable class of consumers.

(10) *Disclosing Summaries of Information.* Section 1101.32(b)(2) of the proposal stated that the Commission would invite comment from manufacturers or private labelers on the information (or a summary of that information) it sought to disclose. Five commenters objected to the provisions permitting the firm to receive a summary. This comment is addressed in the discussion in the preamble concerning § 1101.21.

Section 1101.33 Reasonable Steps to Assure That Disclosure Is Fair in the Circumstances.

As proposed, § 1101.33 defined four measures as reasonable steps to assure that the disclosure of information is fair in the circumstances: (1) Accompanying the disclosure with the firm's comments unless requested by the firm not to do so; (2) accompanying disclosure with an explanatory statement about the nature of the information and furnishing additional relevant data when appropriate; (3) limiting the form of disclosure to that which is considered appropriate; and (4) delaying disclosure if the circumstances warrant it. Two manufacturers objected to this provision.

(a) *Defining When Disclosure Is Unfair*

One commenter suggested that until the Commission defined when a disclosure is unfair, it could not establish procedures intended to assure that the release of information is "fair in the circumstances."

Questions of fairness are dependent on the nature of the information to be disclosed, the firm's comments, the circumstances surrounding the proposed disclosure, and the information in the Commission's files. No commenter suggested a viable way of taking into account all these factors in defining when a disclosure is unfair in the circumstances. The Commission therefore declines to adopt the suggestion.

(b) *Explanatory Statements; Other Relevant Information*

A second commenter stated that the Commission should review the information in light of the firm's comments and other data in its possession and then decide whether the disclosure is fair. The commenter stated that if disclosure is unfair, section 6(b) does not permit disclosure. The commenter, however, also stated that an explanatory or explanatory statement

would never be sufficient to eliminate unfairness.

The Commission does not agree entirely with this broad comment. There may well be circumstances in which no exculpatory statement or explanatory statement would be sufficient to make fair the release of certain types of information. There are occasions, however, when an explanatory statement that places the information in the proper context minimizes the potential that someone might draw misleading or erroneous conclusions from the data in a manner which might make disclosure unfair. In those situations, the Commission believes an explanatory statement is a reasonable step to assure fairness of disclosure. This determination must be made on a case-by-case basis, taking into account the factors identified above.

One commenter suggested that every information disclosure should be accompanied by an explanatory statement and any other relevant information in the Commission's files. The proposed rule stated that the Commission would generally accompany disclosure of information with an explanatory statement and, when practicable, the Commission would disclose other relevant information. There may however be circumstances in which no explanatory statement is necessary or no other relevant information in the Commission's possession exists. The Commission therefore declines to adopt the sweeping suggestion presented by this commenter. (This comment also is discussed above under § 1101.31 to the preamble.)

Another commenter suggested that it also might be appropriate, when dealing with a specific product, to furnish information on the entire product category from the NEISS system data base. The Commission agrees that it sometimes may be appropriate to disclose a summary of the Commission's research about a product category as a whole in addition to the information about a specific product. To do this in every case, however, is neither practical nor required by statute, just as searching the files of the agency for every piece of relevant data may be impractical in terms of time and resources and not necessarily related to insuring that a release is fair. Further, the Commission may be unable to determine what additional information should be provided or what is necessary to place the material in context. For example, if the Commission receives a Freedom of Information Act request for a specific report prepared by a person outside the

Commission that is one of a series of reports, the Commission may not have the means to determine the existence of the other documents. The Commission, in part, must rely upon manufacturers and private labelers to identify in their comments which additional materials the firm believes may be relevant to placing a proposed disclosure in context.

(c) Use of Disclaimer With Consumer Complaints and NEISS Data

Two commenters discussed the fairness of disclosing specific types of information. One wanted the Commission to add a disclaimer when it proposed to release confirmed consumer complaints to the effect that the Commission has not investigated the complaint and does not adopt or endorse the statements of the complainant. The Commission agrees that an explanatory statement of this nature may be appropriate when a confirmed complaint is disclosed. The Commission also agrees with a second comment that it may be appropriate to accompany every dissemination of NEISS data with an explanatory statement describing the nature of the NEISS data and will do so when appropriate. The Commission notes that it already does this when it disseminates computerized NEISS information.

One firm expressed concern that the inclusion of an explanatory statement by the Commission may create "hearsay" problems. Presumably this commenter views an explanatory statement by the Commission as an inherently unreliable second-hand comment on the nature of information. To accept this comment would create a situation in which the Commission would almost never be able to take steps to assure that fairness of a disclosure. The Commission does not believe that such an approach comports with the statutory scheme of section 6(b) and, therefore, has not revised the final rule to preclude disclosure with explanatory statements.

Four commenters suggested that the Commission submit all explanatory statements to the manufacturer for review prior to disclosure. The Commission will provide such statements to manufacturers who submit claims of inaccuracy at the time the Commission notifies the manufacturers under section 6(b)(3) of its intention to disclose information over their objections. The Commission, however, does not view furnishing explanatory statements as required or as a second notification and opportunity to comment under section 6(b).

(d) Fairness of Disclosing Adverse Staff Determinations

A trade association submitted comments on the fairness of disclosing five specific types of information. It claimed that it would always be unfair to disclose staff determinations that a product contained a defect or was in violation of a standard or regulation issued under one of the acts the Commission administers unless the Commission itself had reviewed and formally adopted the determination of the staff. As justification, the association stated that there was a danger that members of the public would conclude that the Commission itself, as opposed to the staff, had made a finding that products are unsafe or unlawful and that a disclaimer would be insufficient to correct any potential damage because the disclaimer would rarely accompany further distribution of the documents.

(1) *Products in Violation of the Law.* Information concerning a product in violation of the law falls within the exceptions to section 6(b)(1) contained in section 6(b)(4). Under that section, when the Commission has reason to believe that a prohibited act involving a product has occurred, section 6(b)(1)-(3) do not apply to information concerning that product. The Commission has reason to believe a prohibited act has occurred at the time its enforcement staff assembles sufficient information to demonstrate the existence of a violation. Such staff determinations and the underlying information are not subject to sections 6(b)(1)-(3), and the Commission declines to adopt the suggestion that they be forwarded to the Commission for consideration and approval before they can be released.

The Commission notes that this approach also conflicts with the present delegations of authority to the Associate Executive Director for Compliance and Administrative Litigation, to the General Counsel, and to the Commission's Regional Office Directors to determine whether a violation of law has taken place. These delegations, properly made pursuant to section 27(b)(9) of the CPSA, 15 U.S.C. 2067(b)(9), enable those individuals to seek timely corrective action of violations. Under the commenter's approach, if the agency desired to release information about a product in violation of the law, the delegations designed to permit the staff to correct violations of the law in the most expeditious manner would have to be rescinded to permit the Commission to review in the first instance each staff determination that a prohibited act has

occurred, a process at odds with the delegations of authority and with the public interest. The Commission, therefore, declines to adopt this suggestion dealing with disclosure of information concerning prohibited acts.

(2) *Staff Preliminary Determinations of Hazard.* The Commission also believes that, subject to section 6(b)(5), 15 U.S.C. § 2055(b)(5) a staff preliminary determination that a product contains a defect which could create a substantial product hazard is releasable if it is supported by specific factual evidence and if the disclosure is placed in the proper context. The speculation that at some unspecified and unknowable stage, the material may be misused is not sufficient to justify withholding it on the ground of unfairness. Rather, an explanatory statement placing the material in perspective is a reasonable step to assure the fairness of disclosure. Such a statement would point out that the information disclosed was not the subject of a formal Commission determination but only represented views of the staff. If a firm contested the preliminary determination, that fact would also be noted in the statement. In addition, the form used by the staff that reflects its preliminary determination will be clearly identified as a staff preliminary determination of hazard. This should further assure no confusion about the nature of this document.

Once released, the Commission cannot control either how people use material or the selective editing of documents. The statute only places an obligation on the Commission to take reasonable steps to assure accuracy and fairness before it discloses information; there is no requirement that the Commission take steps to assure that any subsequent disclosure of material by a recipient meets the statutory criteria. If a firm believes that any subsequent dissemination is unfair or misleading that issue should be raised with the party making the dissemination.

(3) *Settlement Discussions; Closed Meetings.* A trade association suggested that information reflecting the substance of closed meetings or the negotiation of settlements not be disclosed on fairness grounds. It noted that much of this information is submitted pursuant to section 15 of the CPSA to facilitate the agency's obtaining of voluntary, timely, and effective corrective action. Of necessity, this process requires candid discussion and negotiation to reach agreement, often involving the submission of additional evidence and material to permit the staff to evaluate

the adequacy of a proposed corrective action.

The Commission believes that when a manufacturer makes a legitimate claim of confidentiality for minutes or notes of settlement negotiations, draft settlement agreements, and items of that nature, it would generally not be fair in the circumstances to disclose such material after the case is resolved. The rule, therefore, has been revised to state that disclosure of information concerning settlement negotiations and other activities of that nature is not fair in the circumstances where the firm has provided information to facilitate prompt remedial action; has a reasonable expectation of confidentiality for that information; or the firm reasonably expects that notes of settlement negotiations and drafts of settlement agreements will be held in confidence.

A firm's section 15 (b) report would not per se be treated as a document prepared to facilitate settlement. Such a report will customarily be handled in accordance with the requirements of sections 6(b)(5) and 6(b)(1).

(4) *Preliminary Test or Investigation Results.* The proposed rule permitted the release of preliminary test or investigation results. In the interest of fairness, the rule provided that the Commission might postpone disclosing the information until an investigation, analysis, or test of a product was completed, rather than releasing the information piecemeal.

A trade association stated that disclosing the preliminary results of an investigation or test will always be unfair unless there is a compelling need to inform the public of the information. The commenter contended that preliminary results of investigations or tests are often ambiguous and difficult to interpret and that the premature disclosure of test results might needlessly alarm consumers and unjustly harm the reputations of firms.

This approach is too sweeping. Preliminary test results often are innocuous or even favorable to a product. They may be reliable indicators of what the final results will be. The decision to release such results requires a case-by-case analysis. In its section 6 (b) analysis of preliminary data, the Commission will not only evaluate claims of inaccuracy but also will weigh the potential danger of misleading or unduly alarming the public with preliminary results. The Commission will consider the firm's comments on the alleged danger; and any disclosure of such test results will include an

appropriate explanatory statement, if necessary.

(5) *Attorney Work Product Material.* One commenter recommended that attorney work product and other attorney-client privilege material furnished to the Commission to facilitate the Commission's investigation of a particular product not be disclosed when the manufacturer advises the Commission of the confidential nature of the information in question. The commenter claimed that such a disclosure would be unfair in the circumstances. The Commission agrees and has revised the final rule accordingly.

(6) *Automatic Disclosure of Firm's 6(b) Comments.* One commenter took issue with a provision of the proposed rule stating that the Commission would automatically disclose a firm's comments under section 6(b), unless the firm specifically requests confidential treatment. The commenter stated that, for the section 6(b) process to be effective, manufacturers must be free candidly to identify information that is inaccurate or misleading and to explain how disclosure will harm their businesses. The commenter noted that section 6(b) comments the Commission receives may contain explicit descriptions and explanations of documents or materials that a manufacturer considers to be inaccurate or unfair. The commenter contended that the decision-making process contemplated by section 6(b) would be frustrated if competitors, plaintiffs' attorneys or other adversaries of firms could use the FOIA to obtain a manufacturer's section 6(b) comments. In this commenter's view, such disclosure would have a chilling effect on the inclination of a firm to comment candidly on a proposed information disclosure. To resolve this problem, the commenter suggested that the Commission adopt a routine policy of withholding comments unless the firm specifically authorizes disclosure. This stands in contrast to the proposed policy of disclosing the comments unless the manufacturer specifically requests they be withheld.

The Commission intends to follow the general policy of disclosing comments unless the manufacturer specifically requests they be withheld. It is a relatively simple matter for a manufacturer submitting comments to request simultaneously that the comments be withheld. Sometimes, however, a firm may claim confidentiality for information contained in its comments that does not fall into the traditional trade secret or

confidential commercial information category of nondisclosable information.

It is possible that honoring such a request for confidentiality could create an anomaly in which accurate information would not be disclosable under section 6(b) because disclosure of the firm's comments would be the only way to assure that the disclosure was fair in the circumstances. Disclosure of a firm's comments on information is often necessary to place the information in the proper context. Sometimes those comments clarify questions of accuracy, especially those concerning the factual basis for specific statements and the qualifications of individuals to make certain observations or to express opinions; sometimes a manufacturer's comments correct minor inaccuracies although the overall substance of the information to be disclosed is accurate. Adopting a blanket policy that a firm's comments are always to be held in confidence would unnecessarily block the release of information, even though the Commission has taken the requisite reasonable steps to assure that the information is accurate and disclosure would be reasonably related to effectuating one or more purposes of the statutes the Commission administers.

The Commission believes that section 6(b) should not be construed to permit a firm to frustrate the disclosure of information simply by making a blanket claim of confidentiality for the information contained in its comments. Should such an occasion arise, the Commission will notify the manufacturer that disclosure of its comments is necessary to effectuate a fair disclosure of all of the information. The manufacturer will have the opportunity to summarize its comments or to provide an edited version. If the firm consents to release without its accompanying comments, the Commission will maintain the comments in confidence. Should the firm refuse to permit the release of its comments, the Commission will release the information that the comments address with an explanatory statement that the manufacturer furnished data necessary to place the information in context but did not consent to its disclosure. When the comments also dispute accuracy, the manufacturer will, of course, receive notice prior to disclosure under section 6(b)(3).

§1101.34 Reasonable Steps to Assure Information Release Is "Reasonably Related to Effectuating the Purposes of the Acts" the Commission Administers.

Section 1101.34 of the proposed rule attempted to describe the reasonable steps the Commission would take to

assure that disclosure is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission. In section 2 of the CPSA, 15 U.S.C. 2051, those purposes are broadly enumerated as: (1) To protect the public against unreasonable risks of injury associated with consumer products; (2) to assist consumers in evaluating the comparative safety of consumer products; (3) to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations; and (4) to promote research and investigation into the causes and prevention of product related deaths, illnesses, and injuries. In addition, section 5 of the CPSA, 15 U.S.C. 2054, requires the Commission to collect, investigate, analyze, and disseminate injury data and information relating to the causes and prevention of death, injury and illnesses associated with consumer products and to conduct continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products. Further, section 25(c) of the CPSA, 15 U.S.C. 2074(c), requires the Commission to make available to the public all reports on research projects, demonstration projects, and other related activities.

(a) General Principle of Public's Right to Know

The Commission's proposed rule focused on two general principles. First, the Commission would look to the specific purposes of the acts it administers; to the general principles embodied in the CPSA and its legislative history that the public has a right to know about the activities of the Commission; and to the purpose of the Freedom of Information Act, which establishes a general right of the public to have access to information in the government's possession. Second, the Commission proposed to review information in accordance with these three considerations and to make its disclosure decision based on whether the release of the information when taken as a whole would be reasonably related to effectuating one or more of these purposes.

Several commenters objected to this provision. Three wanted the Commission to set forth the explicit steps it would take to assure that disclosure effectuates the purposes of statutes administered by the Commission. Several commenters also objected to the Commission's stated intention in the proposed rule to review information in light of the purposes of the Freedom of Information Act. These

commenters took the position that in *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 120 (1980), the Supreme Court interpreted section 6(b) as a statute requiring information to be withheld under Exemption 3 of the FOIA and thus supersedes the Freedom of Information Act requirements that information be released. These commenters suggested the Commission only look at the purposes of the Consumer Product Safety Act and not to the purposes of the FOIA in deciding whether to disclose information. Similarly, one commenter stated that using the rational of public oversight of the Commission's activities to justify release of information is only warranted where the Commission is in the course of a regulatory or adjudicatory proceeding or investigation. That commenter suggested that only in such instances would a disclosure be related to effectuating the purposes of the Act insofar as oversight of the Commission's activities is concerned.

The Commission partly accepts these comments but does not adopt the sweeping position taken by the commenters. While section 6(b) is an Exemption 3 statute, it does not extinguish the right to obtain information under the Freedom of Information Act. The final rule, therefore, points out that the Commission will look first to the purposes of the statutes it administers in determining whether a disclosure of information is reasonably related to effectuating the purposes of the Acts. In the event of a close question, the Commission will defer to policies of the Freedom of Information Act and will construe the Exemption 3 aspect of section 6(b) narrowly.

The same is true of public oversight to the Commission's activities. If a close question arises as to whether disclosure is reasonably related to effectuating a specific purpose of the statutes, the Commission will defer to the intent of the CPSA that there be public oversight of its activities under all the statutes in determining whether to release the material.

(b) Motives of FOIA Requesters

Several commenters suggested that the reasonable step to assure that disclosure is reasonably related to the effectuation of a purpose of the CPSA requires the Commission to determine the motive of a Freedom of Information Act requester for obtaining the material and the purposes for which the requester seeks the information. These commenters contended that releases

under the Freedom of Information Act are different from Commission-initiated disclosures.

The commenters took the position that if there is no stated purpose or motive in a FOIA request, the Commission could not ascertain whether the release of material would be reasonably related to effectuating a purpose of the Act. They conclude therefore that the Commission would be required to withhold the material from disclosure.

These commenters also suggested that when the Commission is able to ascertain the motivation and purpose of a FOIA requester, the criteria for disclosure should be based on an analysis of whether the requester sought the information for purely a private purpose (such as competing with another firm or developing evidence for use in private litigation) or for a purpose which would contribute to the Commission's performance of its statutory functions (such as a consumer group evaluating the relative safety of different products or a trade association commenting on the technical basis for a proposed safety standard).

The Commission disagrees that analysis of the motivation and purpose of a FOIA requester is a prerequisite for resolving the question of whether the release of information would be reasonably related to effectuating the purposes of the Acts.

The commenter's position is directly contrary to case law under the FOIA. Further to adopt it could encourage FOIA requesters to misrepresent the reasons for their requests to the Commission; would require the agency to perform what would be, at best, a subjective analysis of the nexus of the requester's purpose to the purposes of the act; and would result in information being made public to those who express the "right" reasons and being withheld from those with "improper" motives.

In essence the commenters contend that the disclosure itself must affect a purpose of the act rather than simply being reasonably related to such effectuation. The Commission disagrees with this position. Virtually all of the information maintained by the Commission is generated or obtained to support activities designed to effectuate the purposes enumerated in section 2 of the CPSA and in the transferred acts. For example, research reports are often prepared to assist the Commission in evaluating the risk of injury associated with specific products. Reports of consumer complaints and of in-depth investigations are maintained to provide the Commission with an assessment of the relative risk of injury associated with products. Section 5 of the CPSA

expresses Congressional intent that information prepared or maintained in the course of the Commission's activities to accomplish the statutory purposes also be disseminated to the public. Thus, when information is generated or obtained in the course of Commission activities which effectuate the purposes of the CPSA or the transferred acts, dissemination of that information is reasonably related to effectuating the purposes of the acts and, indeed, may be required by section 5. Accordingly, as a reasonable step to assure that disclosure is reasonably related to effectuation of purposes, the Commission will review information subject to a proposed disclosure to determine whether it was prepared or is maintained as part of a Commission activity which is designed to accomplish the statutory purposes. If so, the Commission will disseminate the information in the absence of specific information demonstrating that the information is sought for a purpose inconsistent with the statutory purposes.

Section 1101.41 Statutory Exceptions—Generally.

Sections 1101.41–1101.46 of the proposed rule described and interpreted the section 6(b)(4) exceptions to the requirements of sections 6(b)(1) through (3). These include information disclosures concerning a product against which the Commission has filed an imminent hazard action or which the Commission has reason to believe violates a prohibited act section of one of the acts it administers. Information in the course of or concerning a rulemaking or an adjudicatory proceeding or any other administrative or judicial proceeding under the acts the Commission administers is also exempt from the section 6(b)(1)–(3) procedures.

Five commenters claimed that the Commission's interpretation of the scope of these exceptions was too broad and requested that the Commission construe the exceptions narrowly.

One commenter noted that the statutory exceptions generally should be read to apply only to dissemination of information that is reasonably related to the subject matter of a particular proceeding and that is necessary to inform the public about the proceeding. The Commission generally agrees with the first part of this statement and has incorporated it into § 1101.41(a) of the final rule. The statute, however, does not limit the exceptions to information necessary to inform the public; the Commission therefore, declines to adopt the second suggestion.

Another commenter correctly noted that, in the absence of a judicial or administrative proceeding, section 6(a)

of the CPSA still applies to information exempt from section 6(b)(1) through (3). According to the commenter, firms must have the opportunity to make claims of confidentiality for such information that the statute provides each firm with one opportunity to make such claims, while the Commission agrees, this comment does not concern section 6(b) and therefore requires no further discussion. The specific comments on the exceptions to sections 6(b)(1)–(3) and the Commission's responses are discussed below.

Section 1101.42 Imminent Hazard Exception.

Section 1101.42 of the proposed rule discussed the imminent hazard exception to section 6(b). One commenter suggested that disclosures of information under this exception be restricted to information necessary to enable the public to understand the nature of the hazard. The Commission believes that the statutory language is not as restrictive as the commenter suggests. Section 6(b)(4) permits the Commission to disclose information about any consumer product against which the Commission has filed an imminent hazard action under section 12 of the CPSA without complying with sections 6(b)(1) through (b)(3). Under the commenter's interpretation, testimony and legal documents such as motions, pleadings, interrogatories, and other discovery requests would not be disclosable without going through the section 6(b) comment process even though they contained information about the consumer product which was the subject of the imminent hazard action and were a matter of public record. Accordingly, the Commission declines to adopt this suggestion but will limit disclosure to information reasonably related to the product that is the subject of the imminent hazard action.

The same commenter took the position that section 6(b) would apply to disclosure of information after the termination of the imminent hazard action, either by withdrawal of the Commission's complaint or by resolution of the suit in the firm's favor. This commenter argued that termination of such a suit ends the need to alert the public and that disclosure of information generated during the proceeding might be unfair if the Commission had previously informed the public that the product was imminently hazardous and the manufacturer subsequently prevailed in the action. The scenario postulated by the commenter is more a matter of procedural fairness rather than

a section 6(b) issue, since it assumes that the Commission would release information already on the public record relating to the alleged hazard without explaining the resolution of the case. The Commission has, however, modified the final rule in the following way. Upon completion of an imminent hazard action, that information which is contained in the Commission's files and has not been disclosed during the litigation or which has been filed *in camera* with the court would become subject to section 6(b). However, information contained in documents filed with the court during the action can continue to be disclosed without compliance with section 6(b). The rationale for this approach is clear. If not filed *in camera*, such documents are part of the official record of the proceeding and remain publicly available through the court after termination of the proceeding. The Commission finds nothing in the CPSA showing that Congress intended section 6(b) to require the Commission to take the unprecedented step of retrieving such documents from the court and holding them in secrecy upon termination of the proceeding. To accept the commenter's view would create the anomaly that the Commission itself could not disclose such information without compliance with section 6(b) but could refer requesters to the court, where the information would be available without restriction.

The Commission believes that the more rational view is that once documents concerning a product that is the subject of an imminent hazard action are made public, section 6(b) does not apply to subsequent disclosures of those documents by the Commission. The Commission, however, has decided not to accord the same status to documents in the Commission's possession that concern a product for which it has filed an imminent hazard action and that it has not made publicly available. The Commission has decided that these documents are more similar to documents prepared during the course of other Commission's activities which are routinely subject to section 6(b) and, therefore, will be treated accordingly.

Section 1101.43 Prohibited Acts Exception

Section 1101.43 contained the exceptions applicable to information concerning products which the Commission has reasonable cause to believe are in violation of one of the acts it administers. One commenter claimed that this exception applies only to acts prohibited under the CPSA since the

statute expressly refers to prohibited acts under section 19 of the CPSA and not to the transferred acts. The Commission recognizes that the text of section 6(b)(4) refers expressly to section 19 of the CPSA. However, section 6(d)(1) of the CPSA states that for the purposes of section 6(b) "the term Act means Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act and the Federal Hazardous Substances Act." In view of this provision, the Commission interprets the prohibited act exception to section 6(b) to apply to all the statutes administered by the Commission.

(a) Probable Cause

Three commenters suggested that this exemption requires an administrative finding of probable cause by the Commission supported by specific and detailed evidence. This approach is more stringent than required by section 6(b)(4). Section 6(b)(4) explicitly applies when the Commission has reasonable cause to believe a product is in violation of one of the prohibited acts. The reasonable cause to believe standard is lower than the probable cause standard. Accordingly, the Commission declines to adopt the suggestion concerning probable cause.

(b) Formal Finding Not Required

The Commissioners are not required to make a formal finding that there is reasonable cause to believe a prohibited act has occurred before the section 6(b) exception applies. Section 27(b)(9) of the CPSA authorizes the Commission to delegate any of its functions or powers (other than that to issue subpoenas) to any officer or employee of the Commission. Among the delegations currently authorized are delegations to the directors of its Regional Offices to determine when violations of the acts administered by the Commission have occurred and to make recommendations for legal action to the Office of the General Counsel and the Directorate for Compliance and Administrative Litigation. The Regional Office directors are also authorized to notify firms that their products are in violation of the law and to seek corrective action. Similarly, the Office of the General Counsel is empowered to initiate injunctive or seizure and condemnation actions in cooperation with the Justice Department. In each of these examples reasonable cause to believe a violation has occurred is present, but the finding is not reviewed by the Commissioners. Accordingly, the Commission declines to adopt the suggestion that the Commissioners review such a

determination in every instance, although in some cases such review may be appropriate.

The Commission has reason to believe a violation of one of the acts it administers has occurred when a duly authorized officer or member of its staff has reviewed the evidence supporting the existence of a violation and has determined that a product is in violation of one of the acts administered by the Commission. The Commission notes that disclosure of information to the public under this circumstance will be rare, absent the filing of a civil action or administrative complaint or the closing of the case, since the records compiled in support of such a case generally are investigatory records customarily exempt from disclosure under Exemption 7 of the FOIA.

(c) Listing Events that Constitute Reason to Believe a Violation has Occurred

One commenter requested that the Commission list all events that might trigger the prohibited acts exception. In support of this request, the commenter correctly noted that the Commission's second draft of the proposed rule identified the filing of a complaint (either administratively or in a federal district court) as an occasion in which the Commission clearly has reason to believe a prohibited act has occurred. The Commission agrees that such a filing requires reasonable cause to believe that a violation has taken place. However, as discussed above, filing is not a prerequisite for the section 6(b)(4) exceptions to apply. The Commission has not adopted this recommendation.

Section 1101.44 Rulemaking Proceeding Exception

Section 1101.44 contained the exception for rulemaking proceedings. Only three commenters raised issues about this section. One suggested that the exception should not be construed to mean that all product specific or generic information concerning the safety of a product class is releasable without restriction once rulemaking has begun. This commenter suggested that there be a direct correlation between the information to be released and the subject matter of the proceeding in order for the exemption to come into play. In the proposal the Commission limited release of information to information in the course of or concerning the rulemaking proceeding. The Commission believes this accomplishes the commenter's objective.

One commenter suggested that the exemption apply only to information in

the public record. The Commission agrees with this comment and has amended the rule to provide that it applies to information in the public record and supporting documentation.

One commenter suggested that, if the Commission elects not to publish a rule or to terminate a rulemaking proceeding without formal action, the statutory exceptions cease to apply. Section 6(b)(4) refers to information "in the course of or concerning" a rulemaking proceeding. If the Commission elects not to take action or decides that a rule is inappropriate, information not yet made public may not be "in the course" of a rulemaking proceeding. The information generated prior to such termination, however, is "in the course" of and/or "concerns" the rulemaking proceeding and, therefore, would still be exempt from section 6(b)(1) through (b)(3). The Commission declines therefore to adopt the commenter's recommendation.

Section 1101.45 Adjudicatory Proceeding Exception.

The same commenter made the same suggestion with regard to proposed § 1101.45. The commenter contended that if an adjudicatory proceeding terminates without action or with a decision in favor of the respondent, the section 6(b)(4) exemption no longer applies. Once again the Commission points out that the failure to act or a decision in favor of a firm may result in information not yet made public not being "in the course" of the adjudicatory proceeding. However, information filed during the proceeding is "in the course" of and/or "concerns" the proceeding and is therefore still covered by the section 6(b)(4) exemption.

One commenter suggested that when the Commission releases information in the course of an adjudicatory proceeding, it accompany release with a disclaimer indicating that the exemption's applicability does not assure the accuracy of the information. This is more a matter of procedural fairness than a section 6(b) matter. Thus, the final rule does not address it.

In order to assure there is no uncertainty concerning the scope of this exception, the Commission points out that the following information and/or documents come within this exemption: (1) Evidence offered (whether or not received into evidence) during the course of the administrative proceeding; (2) discovery materials filed in the case docket maintained in 6 (b)(1) through (b)(3). The Commission declines therefore to adopt the commenter's recommendation.

Section 1101.45 Adjudicatory Proceeding Exception.

The same commenter made the same suggestion with regard to proposed § 1101.45. The commenter contended that if an adjudicatory proceeding terminates without action or with a decision in favor of the respondent, the section 6(b)(4) exemption no longer applies. Once again the Commission points out that the failure to act or a decision in favor of a firm may result in information not being "in the course" of the adjudicatory proceeding. However, information filed during the proceeding "concerns" the proceeding and is therefore still covered by the section 6(b)(4) exemption.

One commenter suggested that when the Commission releases information in the course of an adjudicatory proceeding, it accompany release with a disclaimer indicating that the exemption's applicability does not assure the accuracy of the information. This is more a matter of procedural fairness than a section 6(b) matter. Thus, the final rule does not address it.

Section 1101.46 Other Administrative or Judicial Proceeding Exception.

Section 6(b)(4)(B) contains an exception to the requirements of sections 6 (b)(1) through (b)(3) for information in the course of or concerning other administrative or judicial proceedings under the acts administered by the Commission. Section 1101.46 of the proposed rule enumerated those proceedings which the Commission believed were covered by this exception. Among these were petition proceedings, proceedings to grant the Office of the Secretary, provided to the Presiding Officer, or exchanged among the parties; (3) documents referenced in the list and summary of documentary evidence required by the Commission's Rules of Practice for Adjudicatory Proceedings, 16 CFR 1025.11(b); and (4) any other documents or information that may be filed in the case docket maintained in the Office of the Secretary, provided to the Presiding Officer, or exchanged among the parties. Information and/or documents are "exchanged among the parties" if they are provided by one party to another, even if not provided to all parties to the administrative proceeding (e.g., exchanged between complaint counsel and one of several respondents). In addition, the Commission interprets this exemption to apply to information and/or documents provided by and exchanged among parties, participants, and intervenors. See 16 CFR 1025.17.

Section 1101.46 Other Administrative or Judicial Proceeding Exception

Section 6(b)(4)(B) contains an exception to the requirements of sections 6 (b)(1) through (b)(3) for information in the course of or concerning other administrative or judicial proceedings under the acts administered by the Commission. Section 1101.46 of the proposed rule enumerated those proceedings which the Commission believed were covered by this exception. Among these were petition proceedings, proceedings to grant exemptions from rules, proceedings to issue subpoenas or general or special orders, proceedings to quash or limit such subpoenas or orders, judicial and administrative proceedings to which the Commission is a party, and proceedings to retract inaccurate and misleading information under section 6(b)(7). Several commenters objected to many of these categories.

(a) Petition Proceedings

Seven commenters objected strongly to the exemption for petition proceedings. All took the position that a proceeding to grant or to deny a petition is not a "proceeding" as that term is commonly used in administrative law. All contended that the exception for a petition proceeding was too broad because, upon the filing of a petition, all information in the agency's files dealing with the subject matter of the petition would be releasable without compliance with section 6(b). One noted that this might have the effect of freeing virtually all information in the possession of the Commission from the protections afforded by section 6(b), since most of the agency's regulatory actions are initiated by petitions.

The basis for the petition exception appears in the legislative history of the 1981 amendments to the Consumer Product Safety Act. The Conference Report accompanying the Omnibus Budget Reconciliation Act of 1981 (H.R. Rep. No. 208, 97th Cong., 1st Sess. 1, 879, reprinted in 1981 U.S. CODE CONG. & AD. NEWS 396, 1232) specifically identifies proceedings to grant or deny petitions and proceedings in which motions are filed to quash or limit subpoenas or special or general orders as examples of proceedings that fall within the section 6(b)(4) exception for other administrative proceedings. Given the legislative history, it is clear that Congress intended the statutory exceptions to extend to petition proceedings. The final rule therefore remains unchanged from the proposed rule on this issue.

Moreover the Commission believes that the commenters misconstrued this exception and therefore their fears are unfounded. Information releasable during a petition proceeding without complying with section 6(b) is limited to that information contained or referenced in any staff briefing paper on the petition. Thus, the material that is releasable without complying with section 6(b) in response to a FOIA request for information in the course of a petition proceeding would be the petition itself, staff briefing papers, and the supporting documentation. Absent incorporation in such a briefing paper, other information in the Commission's files would still be subject to section 6(b).

(b) Exemptions, Special or General Orders, Subpoenas, Retractions

Several commenters objected to the identification in the proposed rule of information in the course of or concerning a proceeding to grant an exemption from a substantive rule, to issue a subpoena or general or special order, to quash or limit a special or general order or subpoena, or to retract inaccurate and misleading information as being exempt from section 6(b). These commenters took the position that such activities are not proceedings in the customary administrative sense and therefore the information concerning such proceedings should not be exempt from section 6(b). One commenter was concerned that exempting information in the course of a proceeding to issue a subpoena or special or general order would prematurely expose a firm to a detrimental information release without notice.

The Commission disagrees with these commenters. Each of these proceedings is either expressly referenced in or is of a nature almost identical to those listed in the legislative history as the types of other administrative and judicial proceedings Congress intended to exempt from section 6(b). Accordingly, the Commission's interpretation of the extent of the section 6(b)(4) exception is reasonable.

(c) Administrative or Judicial Proceedings to Which CPSC Is a Party

Two commenters took the position that the exemption for administrative or judicial proceedings to which the Commission is a party applies only to proceedings under the Consumer Product Safety Act or the transferred acts. These commenters therefore contended that the exception does not apply to private litigation to which the Commission is a party. The Commission's position on this issue is

discussed above fully in § 1101.11(d) of the preamble.

Section 1101.52 Retraction Procedures

Section 1101.52 of the proposed rule set forth the procedures the Commission proposed to follow in determining whether retraction of an inaccurate and misleading statement was appropriate and, if so, the method by which such statement would be retracted. The Commission received only three comments on retraction. One suggested that the proposed rule contain a presumption that any disclosure to which a firm has objected and which was inaccurate is adverse. This commenter objected to the requirement in the proposed rule that a firm provide information as to why it believed such a disclosure reflected adversely on the safety of the consumer product in issue. The commenter contended that a manufacturer should not be forced to quantify the harm associated with disclosure before the Commission would consider a retraction.

(a) Quantifying Harm

The Commission agrees that it often may be difficult to quantify the harm which might result from disclosure of inaccurate and misleading material. The Commission therefore will entertain a request for retraction even though a firm is unable to quantify such harm. The firm however must still provide the Commission with an explanation of how the information is inaccurate or misleading and how it reflects adversely on the safety of the product or the practices of the manufacturer. The Commission notes, however, that information quantifying harm would be invaluable in determining the scope of a retraction statement, if appropriate, and the audience to which such a statement should be addressed. Accordingly, the Commission expects manufacturers to provide such information when it is available.

(b) Scope of Dissemination of Retraction

Section 1101.52(d) stated that the Commission would publish a retraction in a manner equivalent to that in which the original disclosure was made. One commenter suggested that sometimes it might be appropriate for a retraction to be disseminated more widely than the original inaccurate and misleading material. In support of this proposition, the commenter pointed to the legislative history contained in the House Report which noted that there "may be circumstances where equity requires fuller disclosure of the Commission's mistakes in order to repair the damage to any manufacturer of the product

which may have resulted from publication of the inaccurate information." The Commission agrees with this manufacturer's comment and has revised the rule accordingly.

(c) Information Needed to Support Retraction Request

The same commenter took the position that the Commission's rule should encourage firms to include as much information as possible in retraction requests. The commenter pointed out, however, that it may not always be possible to provide all the information required by the proposed rule. Accordingly, the commenter requested that the final rule state that the information specified in § 1101.52 be provided if it is available but that the absence of full information will not prevent the Commission from taking prompt action on the firm's retraction request.

The Commission agrees with this comment and has revised the rule to require the firm to provide information that is reasonably available. However, if the Commission requests that a manufacturer explain the absence of the information, the Commission expects the firm to be able to demonstrate a reasonable effort to obtain the missing information.

(d) Commission Action on Retraction Request

Section 1101.52(d) stated that the Commission would act expeditiously on any request for retraction. Two commenters requested that the Commission include a specific time frame in its rule. One commenter advocated a 10 day period while a second advocated a 30 day period unless unusual circumstances necessitated a longer period. The Commission believes that a 30 working day period is reasonable. The revised rule therefore includes a provision specifying the Commission will act on a retraction request within 30 working days unless good cause exists to extend the time for acting.

Section 1101.61 Information Submitted Pursuant to Section 15(b) of the CPSA

Section 6(b)(5) of the CPSA prohibits the Commission from disclosing to the public information submitted pursuant to section 15(b) of the CPSA respecting a consumer product unless the Commission has issued an administrative complaint under section 15(c) or (d) of the CPSA, has accepted in writing a remedial settlement agreement dealing with such a product, or has obtained the consent of the person who

submitted the information to disclose it. The section further exempts from its prohibition public disclosure of information concerning a consumer product which is the subject of a section 12 action, or which the Commission has reasonable cause to believe is in violation of a prohibited act section of one of the acts it administers, or information in the course of or concerning a judicial proceeding.

The Commission's proposed rule extended this protection to all information submitted by a firm pursuant to section 15, including that submitted after the filing of an initial report under section 15(b). Similarly, the proposed rule implicitly recognized that, upon the occurrence of one of the specified events, section 6(b)(1) would still apply to any information disclosure (unless that disclosure fell within one of the statutory exceptions of section 6(b)(4)).

Two commenters expressed fear that the protections provided by section 6(b)(5) were diluted by a reference in the proposed rule to the other general provisions of the section 6(b) rule. While the commenters did not specifically point to matters which might, in their view, jeopardize the statutory protections, the Commission believes that revisions in other sections of the final rule address their concerns.

(a) Remedial Settlement Agreements

One commenter suggested that the types of "remedial settlement agreements" which would remove the statutory prohibition on disclosure of information be limited to recalls or similar voluntary public actions. The Commission declines to accept this proposal. A voluntary corrective action plan in effect settles a potential administrative or judicial action. Such corrective action can range in scope from adding a label to a product or altering future production to a total recall and public notification program. The nature and extent of such an undertaking however does not change the fact that it is a remedial settlement agreement. Accordingly, the Commission declines to restrict the rule in this manner.

One commenter suggested that the rule be amended to include the term "voluntary corrective action program" in the provision dealing with remedial settlements. The voluntary corrective action program undertaken by manufacturers who have reported pursuant to 15(b) is a remedial settlement agreement. The Commission does not believe that the rule requires an amendment to reflect this fact.

(b) Information Independently Obtained or Prepared by the Commission

Three commenters objected to the provisions of the proposed rule which stated that section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff. These commenters contend that there is no statutory basis for this exclusion, and one expressed fear that the Commission would attempt to release information submitted pursuant to section 15(b) by contending that the staff independently obtained it.

Both the statute and Congressional intent point to the opposite conclusion. The statute specifically exempts only that information submitted pursuant to section 15(b). Section 15(b) requires firms to report to the Commission information which reasonably supports the conclusion that a product either does not comply with an applicable consumer product safety rule or contains a defect which could create a substantial hazard. Information independently obtained or prepared by the Commission is, by definition, not submitted by the firm.

The Congressional purpose of prohibiting public disclosure of information submitted pursuant to section 15(b) is clear. The exemption is designed to encourage firms to make a free and candid disclosure of all relevant information concerning a noncomplying product or a potential substantial product hazard without fear of premature release to the public in a fashion which jeopardize the firm's or product's reputation. The possibility of premature release could inhibit full disclosure and lead to a delay in obtaining corrective action. In contrast, most instances in which the Commission is forced to generate such information occur because the firm fails to submit information pursuant to section 15(b). The policies which support withholding information submitted by manufacturers do not apply to staff generated information.

Thus, the Commission does not believe Congress intended to permit firms to shirk their obligation to report under section 15(b) and then to assert the privilege of nondisclosure when the Commission proposes to disclose the information obtained independently or prepared by its staff. Such information, however, is subject to section 6(b).

(c) Scope of Information Subject to Section 6(b)(5)

Two commenters suggested that the rule be amended to extend the statutory protection of section 6(b)(5) to information identified by the firm or treated by the staff as being submitted

pursuant to section 15(b). In support of this position, the commenters pointed out that many firms report product hazards to the Commission but are reluctant to acknowledge that their products contain defects which may present a substantial product hazard. To avoid this concession, firms often disclaim any legal obligation to report under section 15(b). The commenters note that the Commission staff nevertheless treats such reports as being filed under section 15.

The Commission agrees that this comment has merit. The Commission's rules setting forth the requirements for reporting expressly envision situations in which firms are permitted to make such disclaimers while reporting to the Commission (16 CFR 1115.12(a)). The final rule, therefore, has been revised to take into account this concern.

Section 1101.71 Delegation of Authority—Information Group.

Section 1101.71 of the proposed rule delegated the Commission's authority to render decisions on the release of information subject to section 6(b) to an Information Group composed of the General Counsel and the Secretary of the Consumer Product Safety Commission or their designees. The rule required designees to be senior staff members.

Seven parties commented on this aspect of the proposed rule. Four supported the delegation to the Information Group. Two of these suggested that the group include the head of the Commission's Directorate for Engineering and Sciences, inasmuch as the decision whether to release a document under section 6(b) often involves highly technical issues. One wanted the delegation limited to the Secretary and General Counsel with no subdelegation to senior staff members while another supported the delegations in the proposed rule as long as the rule contained a system for administrative appeal.

Three other commenters took the position that the delegation to the Information Group was improper. One incorrectly claimed that the legislative history of the 1981 amendments to section 6(b) directed the Commission to establish the system of administrative appeal. (The 1981 amendments only direct the Commission to establish an internal system for the review of issues of accuracy under section 6(b)(6), which applies to Commission initiated disclosures.)

All commenters, however, suggested that there be an appeal as of right to the Commission from a decision of the

Information Group. One commenter noted that this procedure would implement the statutory safeguards and that it expected such appeals to be rarely taken.

At the outset, the Commission disagrees with the contention that its delegation of authority to the Information Group is illegal. Section 27(b)(9) of the Consumer Product Safety Act authorizes the Commission to delegate any of its functions (other than the power to issue subpoenas) to any officer or employee of the Commission. Accordingly, the delegation to the Information Group is statutorily authorized.

Subsequent to the publication of the proposed rule, the Commission has had the opportunity to process many requests for disclosure of information subject to section 6(b). It has become apparent that, in some cases, the existence of the Information Group facilitates processing the requests while in other cases the Information Group is unnecessary. The Commission has therefore revised § 1101.71 in the following manner. Proposed section 6(b) information disclosures will be processed according to the same internal procedure utilized to process other documents prepared by the staff. The evaluation of section 6(b) information disclosures at the staff level will include, if appropriate, consultation with the technical or enforcement staff to assure that the information in question is evaluated for accuracy in the fullest possible manner. After such evaluation, the initial recommendation of the staff member working on a section 6(b) information disclosure will be reviewed by his or her supervisor and forwarded to the Secretary of the Commission, if no comments were received in response to a request for section 6(b) comments, or to the General Counsel if comments were received. The General Counsel and Secretary may delegate the authority to approve or reject recommendations to senior level employees in their respective offices. The General Counsel is also given the discretion to empanel an Information Group to consider specific disclosure matters or specific classes of disclosures. This process will assure that section 6(b) matters receive senior level management review.

With regard to administrative appeal, the decision of the General Counsel or the Secretary shall be final agency action. The Commission notes that, because of the statutory right to bring suit within the 10 working day period prior to disclosure where a firm objects to disclosure on accuracy grounds, a

firm's interests are not prejudiced by making a decision of the Secretary or General Counsel final agency action. However, the General Counsel, the Secretary or the Information Group (if one is empaneled) has the discretion to refer a section 6(b) matter to the Commission for a policy decision or, for good cause shown by a firm, to transmit a proposed section 6(b) disclosure disputed by the firm to the Commission for decision. This will insure that significant policy issues and substantive issues of accuracy and fairness can be reviewed by the Commission.

The requirement for showing good cause will eliminate *pro forma* frivolous appeals which the Commission has encountered in some Freedom of Information Act cases. If administrative appeals to the Commission were allowed as a matter of right, upon receipt of the ten working day notice of proposed disclosure, the firm could file an appeal that would have to be acted upon by the Commission prior to disclosure of the information. An administrative appeal of this nature could be nothing more than a tactic to delay disclosure. The Commission has therefore included in the final rule the requirement of showing good cause in support of a request that a section 6(b) matter to the Commission. Nevertheless, it shall be the decision of the General Counsel, the Secretary, or the Information Group whether to transmit a matter to be referred to the Commission.

Appendix A: Letter to Persons Who Make Product Complaints.

Appendix A of the proposed rule contained an example of a letter to be sent to persons who make product complaints to request that they confirm the complaints. One commenter recommended that the letter request the recipient to have the confirmation notarized. As discussed earlier, the Commission does not believe that this is a necessary step to comply with section 6(b) and has declined to adopt the suggestion.

A second comment suggested that the letter include a statement indicating that the person submitting the complaint may be questioned by the Commission or other interested parties and that submitters should be required to include their name in the complaint letter and make it available for release. The Commission believes that transmitting a complaint to the manufacturer of a product will have the same result as notifying the consumer that he or she may be questioned and has therefore not revised the letter. The Commission also routinely asks complainants for permission to disclose their identities.

Section 25(c) of the CPSA, 15 U.S.C. § 2074(c), however, prohibits the Commission from disclosing the identity of injured persons contained in accident or investigation reports. The failure to agree to disclosure does not *per se* render a complaint non-releasable. Rather the complaint will be evaluated in accordance with the procedures set forth in §§1101.32, 1101.33, and 1101.34.

The same commenter suggested the copy of the confirmation as well as the original complaint be forwarded to the manufacturer of the product subject to the complaint. The commenter claims that this will provide the manufacturer with the opportunity to take expeditious remedial action. The Commission is already following this practice. The Commission would note that it has deleted Appendix A from the final rule since it is unnecessary for the implementation of section 6(b).

Although the section 6(b) rule is an "interpretive" rule, the Commission and its staff will follow the provisions of the rule.

Regulatory Flexibility Analysis

In accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Section 6(b) of the Consumer Product Safety Act itself may have economic impact on small business because this statute affects all business entities, regardless of size. Section 6(b) as enacted and subsequently amended demonstrates Congressional concern and intent that statutory safeguards be established and followed by the Commission in fulfilling its purpose of collecting and disseminating accurate product safety information. The final regulation merely enumerates the Commission's policy concerning the factors which are balanced in determining whether public disclosure of information is appropriate under section 6(b) and whether the statutory safeguards of that section have been satisfied. The final regulation, however, will have no economic impact on small business, either beneficial or negative beyond that which results from the statutory provision.

A certification that the regulation will not have a significant impact on small businesses has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

Environmental Considerations

The final rule below does not fall within any of the categories of Commission activities described in 16

CFR 1021.5(b) which have the potential for producing environmental effects, and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the final rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule proposed below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1101

Consumer protection. Disclosure of information. Administrative practice and procedure. Freedom of information.

Conclusion

Therefore, the Commission amends Title 16 Chapter II of the Code of Federal Regulations by adding a new Part 1101 to Subchapter B, reading as set forth below.

PART 1101—INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Background

Sec.

- 1101.1 General background.
1101.2 Scope.

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

- 1101.11 General application of provisions of Section 6(b)(1).
1101.12 Commission must disclose information to the public.
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Subpart C—Procedure for Providing Notice and Opportunity to Comment Under Section 6(b)(1)

- 1101.21 Form of notice and opportunity to comment.
1101.22 Timing: request for time extensions.
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1101.24 Scope of comments Commission seeks.
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1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts it Administers

Sec.

- 1101.31 General requirements.
1101.32 Reasonable steps to assure information is accurate.

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Subpart E—Statutory Exceptions of Section 6(b)(4)

- 1101.41 Generally.
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Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

- 1101.61 Generally.
1101.62 Statutory exceptions to Section 6(b)(5) requirements.
1101.63 Information submitted pursuant to Section 15(b) of the CPSA.

Subpart H—Delegation of Authority to Information Group

- 1101.71 Delegation of authority.
Authority: Sec. 6(b) of Pub. L. 92-573, 86 Stat. 1212, as amended by Pub. L. No. 97-35, 95 Stat. 703-25, 15 U.S.C. 2055(b); 5 U.S.C. 553.

Subpart A—Background

§ 1101.1 General background.

(a) *Basic purpose.* This rule sets forth the Consumer Product Safety Commission's policy and procedure under sections 6(b)(1)-(5) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2055(b)(1)-(5)) which relate to public disclosure of information from which the identity of a manufacturer or private labeler of a product can be readily ascertained. In addition, these rules provide for retraction of inaccurate or misleading information the Commission has disclosed that reflects adversely on the safety of a consumer product or class of products or on the practices of any manufacturer, private labeler, distributor or retailer of consumer products as required by section 6(b)(7) of the CPSA (15 U.S.C. 2055(b)(7)).

(b) *Statutory requirements.* Section 6(b) establishes procedures that the Commission must follow when it releases certain firm specific information to the public and when it retracts certain information it has released.

(1) Generally, section 6(b)(1) requires the Commission to provide manufacturers or private labelers with advance notice and opportunity to comment on information the Commission proposes to release, if the

public can readily ascertain the identity of the firm from the information. Section 6(b)(1) also requires the Commission to take reasonable steps to assure that the information is accurate and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts administered by the Commission. Disclosure of information may not occur in fewer than 30 days after notice to the manufacturer or private labeler unless the Commission finds the public health and safety requires a lesser period of notice. Exceptions to these requirements are established in section 6(b)(4). Additional limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA are established in section 6(b)(5).

(2) Section 6(b)(2) requires the Commission to provide further notice to manufacturers or private labelers where the Commission proposes to disclose product-specific information the firms have claimed to be inaccurate.

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent disclosure of product-specific information after the firms have received the notice specified.

(c) *Internal Clearance Procedures.* Section 6(b)(6) requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information that reflect on the safety of a consumer product or class of products, even if the information is not product specific. This rule does not address section 6(b)(6) because the Commission has internal clearance procedures in its directives system. (Directive 1450.2 "Clearance Procedures for Commission Staff to Use in Providing Information to the Public," April 27, 1983.

§ 1101.2 Scope.

Section 6(b) and these rules apply to information concerning products subject to the CPSA, 15 U.S.C. 2051-2085, and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U.S.C. 1191-1204 (FFA); the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261-1276 (FHSA); and the Refrigerator Safety Act, 15 U.S.C. 1211-1214 (RSA). See section 6(b)(1) of the CPSA, 15 U.S.C. 2055(d)(1).

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

§ 1101.11 General application of provisions of Section 6(b)(1).

(a) *Information Subject to Section 6(b)(1).* To be subject to the notice and analysis provisions of section 6(b)(1), information must meet all the following criteria:

(1) The information must pertain to a specific product which is either designated or described in a manner which permits its identity to be ascertained readily by the public.

(2) The information must be obtained, generated or received by the Commission as an entity or by individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities.

(3) The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (see § 1101.12).

(4) The manner in which the product is designated or described in the information must permit the public to ascertain readily the identity of the manufacturer or private labeler. [See § 1101.13.]

(b) *Information Not Subject to Section 6(b)(1).* The requirements of section 6(b)(1) do not apply to:

(1) Information described in the exclusions contained in section 6(b)(4) of the CPSA (see Subpart E of this rule).

(2) Information the Commission is required by law to make publicly available. This information includes, for example, Commission notifications to foreign governments regarding certain products to be exported, as required by section 18(b) of the CPSA, 15 U.S.C. 2068(b); section 14(d) of the FHSA, 15 U.S.C. 1273(d); and section 15(c) of the FFA, 15 U.S.C. 1202(c). (See the Commission's Export Policy Statement, 16 CFR Part 1017.)

(3) Information required to be disclosed to the President and Congress pursuant to section 27(j) of the CPSA, 15 U.S.C. 2076(j).

(4) Press releases issued by firms.

(5) Information filed or presented in administrative proceedings or litigation to which the Commission is a party and which is not expressly subject to the section 6(b)(4) exceptions.

§ 1101.12 Commission must disclose information to the public.

Public. For the purposes of section 6(b)(1), the public includes any person except:

(a) Members, employees, agents, representatives and contractors of the Commission, in their official capacity.

(b) State officials who are commissioned officers under section 29(a)(2) of the CPSA, 15 U.S.C. 2078(a)(2), to the extent that the Commission furnishes them information necessary for them to perform their duties under that section. Such officials may not release to the public copies of such information unless the Commission has complied with section 6(b) or the information falls within an exception to section 6(b).

(c) Members of a Commission Chronic Hazard Advisory Panel established under section 28 of the CPSA; 15 U.S.C. 2077. However, disclosures of information by such a Panel are subject to section 6(b).

(d) The persons or firms to whom the information to be disclosed pertains, or their legal representatives.

(e) The persons or firms who provided the information to the Commission, or their legal representatives.

(f) Other Federal agencies or state or local governments to whom accident and investigation reports are provided pursuant to section 29(e) of the CPSA, 15 U.S.C. 2078(e). However, as required by that section, employees of Federal agencies or state or local governments may not release to the public copies of any accident or investigation report made under the CPSA by an officer, employee or agent of the Commission unless CPSC has complied with the applicable requirements of section 6(b).

(g) The Chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter which is the subject of the information requested.

§ 1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

(a) The advance notice and analysis provisions of section 6(b)(1) apply only when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product. The Commission will provide the advance notice and opportunity to comment if there is a question whether the public could readily ascertain the identity of a manufacturer or private labeler.

Subpart C—Procedure for Providing Notice and Opportunity To Comment Under Section 6(b)(1)

§ 1101.21 Form of notice and opportunity to comment.

(a) *Notice may be oral or written.* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1). However, when the Commission makes a public health and safety finding pursuant to section 6(b)(1) of the CPSA, the Commission may determine that it is necessary to provide the notice and opportunity to comment orally, either in person or by telephone.

(b) *Content of notice.* The Commission will provide the manufacturer or private labeler with:

(1) Either the actual text of the information to be disclosed or, if appropriate, a summary of the information.

(2) A general description of the manner in which the Commission will disclose the information, including any other relevant information the Commission intends to include with the disclosure. If the Commission advises that the form of disclosure will be by press release, for example, the Commission need not provide further notice to disclose a summary of the press release.

(3) A request for comment with respect to the information, including a request for explanatory data or other relevant information for the Commission's consideration.

(4) A statement that, in the absence of a specific request by a firm that its comments be withheld from disclosure, the Commission will release to the public the firm's comments (or a summary thereof prepared by the firm or, if the firm declines to do so, by the Commission).

(5) A statement that a request that comments be withheld from disclosure will be honored.

(6) Notice that the firm may request confidential treatment for the information, in accordance with section 6(a)(3) of the Consumer Product Safety Act, 15 U.S.C. 2055(a)(3) [see § 1101.24(b)].

(7) A statement that no further request for comment will be sought by the Commission if it intends to disclose the identical information in the same format, unless the firm specifically requests the opportunity to comment on subsequent information disclosures.

(8) The name, address, and telephone number of the person to whom comments should be sent and the time

when any comments are due (see § 1101.22).

§ 1101.22 Timing: request for time extensions.

(a) *Time for comment.* (1) Generally firms will receive a minimum of twenty (20) calendar days from the date of the letter in which the Commission transmits the notice to furnish comments to the Commission. Firms that receive requests for comments by mail will receive an additional three (3) days to comment to account for time in the mail.

(2) Upon his or her own initiative or upon request, the Freedom of Information Officer may provide a different amount of time for comment, particularly for firms that receive voluminous or complex material. In addition, the Commission may find that the public health and safety requires a lesser period of notice and may require a response in a shorter period of time (see § 1101.24).

(b) *No response submitted.* (1) If the Commission has not received a response within the time specified and if it has received no request for extension of time, the Commission will analyze the information as provided in Subpart D. If no comments are submitted the Commission will not give the further notice provided in section 6(b)(2).

(2) Unless the Commission finds that the public health and safety requires a lesser period of notice (see § 1101.23), the Commission will not disclose the information in fewer than 30 days after providing a manufacturer or private labeler notice and opportunity to comment.

(c) *Requests for time extension.* (1) Requests for extension of time to comment on information to be disclosed must be made to the person who provided the Commission's notice and opportunity to comment. The request for time extension may be either oral or written. An oral request for a time extension must be promptly confirmed in writing.

(2) Requests for extension of time must explain with specificity why the extension is needed and how much additional time is required.

(3) The Commission will promptly respond to requests for extension of time.

§ 1101.23 Providing less than 30 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 30 days after providing notice to the manufacturer or private labeler.

(a) *Firm agrees to lesser period or does not object to disclosure.* The Commission may disclose to the public information subject to section 6(b)(1) before the 30-day period expires when, after receiving the Commission's notice and opportunity to comment, the firm involved agrees to the earlier disclosure; notifies the Commission that it has no comment; or notifies the Commission that it does not object to disclosure.

(b) *Commission finding a lesser period is required.* Section 6(b)(1) provides that the Commission may find that the public health and safety requires a lesser period of notice than the 30 days advance notice that section 6(b)(1) generally requires. The Commission may determine that the public health and safety requires less than 30 days advance notice, for example, to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterizes statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 30 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the *Federal Register*. Disclosure may be made concurrently with the filing of the *Federal Register* notice and need not await its publication. However, where applicable, before releasing information, the Commission will comply with the requirements of section 6(b)(1) and (2) by giving the firm the opportunity to comment on the information, either orally or in writing depending on the immediacy of the need for quick action, and by giving the firm advance notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (see § 1101.25).

§ 1101.24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* The section 6(b) opportunity to comment on information is intended to permit firms to furnish information and data to the Commission to assist the agency in its evaluation of the accuracy of the information. A firm's submission, therefore, must be specific and should be accompanied by

documentation, where available, if the comments are to assist the Commission in its evaluation of the information. Comments of a general nature, such as general suggestions or allegations that a document is inaccurate or that the Commission has not taken reasonable steps to assure accuracy, are not sufficient to assist the Commission in its evaluation of the information or to justify a claim of inaccuracy. The weight accorded a firm's comments on the accuracy of information and the degree of scrutiny which the Commission will exercise in evaluating the information will depend on the specificity and completeness of the firm's comments and of the accompanying documentation. In general, specific comments which are accompanied by documentation will be given more weight than those which are undocumented and general in nature.

(b) *Claims of Confidentiality.* If the manufacturer or private labeler believes the information involved cannot be disclosed because of section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), which pertains to trade secret or other confidential material, the firm may make claims of confidentiality at the time it submits its comments to the Commission under this section. Such claims must identify the specific information which the firm believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases its claims. (See Commission's Freedom of Information Act regulation, 16 CFR Part 1015, particularly 16 CFR 1015.18.)

(c) *Requests for Nondisclosure of Comments.* If a firm objects to disclosure of its comments or a portion thereof, it must notify the Commission at the time it submits its comments. If the firm objects to the disclosure of a portion of its comments, it must identify those portions which should be withheld.

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission shall notify the manufacturer or private labeler that it intends to disclose the information not less than 10 working days after the date of the receipt of notification by the firm. The notice of

intent to disclose will include an explanation of the reason for the Commission's decision, copies of any additional materials, such as explanatory statements and letters to Freedom of Information Act requesters, which were not previously sent to the firm.

(b) *Commission finding a lesser period is required.* The Commission may determine that the public health and safety requires less than 10 working days advance notice of its intent to disclose information claimed to be inaccurate. For example, the Commission may determine it is necessary to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterized statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of findings.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 10 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the **Federal Register**. Firms will be notified in advance of the date and time, if possible, at which the Commission intends to disclose the information. Disclosure may be concurrently with the filing of the **Federal Register** notice and need not await its publication. The **Federal Register** notice prepared under section 6(b)(2) may be submitted simultaneously with or after a **Federal Register** notice prepared under section 6(b)(1) (see § 1101.23(c)).

§ 1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

(a) *Notice to the extent practicable.* Section 6(b)(1) requires that "to the extent practicable" the Commission must provide manufacturers and private labelers notice and opportunity to comment before disclosing information from which the public can ascertain readily their identity.

(b) *Circumstances when notice and opportunity to comment is not practicable.* The Commission has determined that there are various circumstances when notice and opportunity to comment is not practicable. Examples include the following:

(1) When the Commission has taken reasonable steps to assure that the company to which the information pertains is out of business and has no identifiable successor.

(2) When the information is disclosed in testimony in response to an order of the court during litigation to which the Commission is not a party.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts it Administers

§ 1101.3 General requirements.

(a) *Timing of decisions.* The Commission will attempt to make its decision on disclosure so that it can disclose information in accordance with section 6(b) as soon as is reasonably possible after expiration of the statutory thirty day moratorium on disclosure.

(b) *Inclusion of comments.* In disclosing any information under this section, the Commission will include any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler at the time it submits its section 6(b) comments specifically requests the Commission not to include the comments or to include only a designated portion of the comments and disclosure of the comments on such a designated portion is not necessary to assure that the disclosure of the information which is the subject of the comments is fair in the circumstances.

(c) *Explanatory statements.* Where appropriate, the Commission will accompany the disclosure of information subject to this subpart with an explanatory statement that makes the nature of the information disclosed clear to the public. Inclusion of an explanatory statement is in addition to, and not a substitute for, taking reasonable steps to assure the accuracy of information. To the extent it is practical the Commission will also accompany the disclosure with any other relevant information in its possession that places the released information in context.

(d) *Information previously disclosed.* If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again in the same format, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy or unless the firm, in its comments responding to the Commission's initial section 6(b) notice,

specifically requests the opportunity to comment on subsequent disclosures, or unless the Commission determines that sufficient time has passed to warrant seeking section 6(b) comment again. Before disclosing the information the Commission will again review the information to see if accuracy is called into question and will further look to whether disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.

§ 1101.32 Reasonable steps to assure information is accurate.

(a) The Commission considers that the following types of actions are reasonable steps to assure the accuracy of information it proposes to release to the public:

(1) The Commission staff or a qualified person or entity outside the Commission (e.g., someone with requisite training or experience, such as a fire marshal, a fire investigator, an electrical engineer, or an attending physician) conducts an investigation or an inspection which yields or corroborates the product information to be disclosed; or

(2) The Commission staff conducts a technical, scientific, or other evaluation which yields or corroborates the product information to be disclosed or the staff obtains a copy of such an evaluation conducted by a qualified person or entity; or

(3) The Commission staff provides the information to be disclosed to the person who submitted it to the Commission for review and, if necessary, correction, and the submitter confirms the information as accurate to the best of the submitter's knowledge and belief, provided that:

(i) The confirmation is made by the person injured or nearly injured in an incident involving the product; or

(ii) The confirmation is made by a person who, on the basis of his or her own observation or experience, identifies an alleged safety-related defect in or problem with such a product even though no incident or injury associated with the defect or problem may have occurred; or

(iii) The confirmation is made by an eyewitness to an injury or safety-related incident involving such a product; or

(iv) The confirmation is made by an individual with requisite training or experience who has investigated and/or determined the cause of deaths, injuries or safety-related incidents involving such a product. Such persons would include, for example, a fire marshal, a fire investigator, an electrical engineer,

an ambulance attendant, or an attending physician; or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis.

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy in accordance with § 1101.32(a).

(2) As described in Subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the Commission proposes to disclose and will invite comment with respect to that information.

(3) If the Commission receives no comments or only general, undocumented comments claiming inaccuracy, the Commission will review the information in accordance with § 1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question.

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

§ 1101.33 Reasonable steps to assure that information release is fair in the circumstances.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances:

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a

designated portion thereof not accompany the information.

(2) The Commission generally will accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. The Commission will also take reasonable steps to disclose any other relevant information in its possession that will assure disclosure is fair in the circumstances.

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

(b) The Commission will not disclose information when it determines that disclosure would not be fair in the circumstances. The following are examples of disclosures which generally would not be fair in the circumstances.

(1) Disclosure of information furnished by a firm to facilitate prompt remedial action or settlement of a case when the firm has a reasonable expectation that the information will be maintained by the Commission in confidence.

(2) Disclosure of notes or minutes of meetings to discuss or negotiate settlement agreements and of drafts of documents prepared during settlement negotiations, where the firm has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of the work-product of attorneys employed by a firm and information subject to an attorney/client privilege, if the Commission has obtained the information from the client or the attorney, the attorney or client advises the Commission of the confidential nature of the information at the time it is submitted to the Commission, and the information has been maintained in confidence by the client and the attorney.

(4) Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.

§ 1101.34 Reasonable steps to assure information release is "Reasonably Related to Effectuating the Purposes of the Acts" the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers.

(1) *Purposes of the CPSA.* The Commission will review information to determine whether disclosure would be reasonably related to effectuating one or more of the specific purposes of the CPSA, as set forth in sections 2(b) and 5, 15 U.S.C. 2051(b) and 2054.

(2) *Purposes of the FHSA, FFA, PPPA and RSA.* The Commission will also review information concerning products subject to the transferred acts it administers and to the Commission's specific functions under those acts to determine whether disclosure of information would be reasonably related to effectuating the purposes of those acts.

(3) *Purposes of the FOIA.* FOIA requests will be reviewed to determine whether disclosure of the information is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission. In the event of a close question on this issue, the Commission will defer to the purposes of the FOIA. The FOIA establishes a general right of the public to have access to information in the Commission's possession, particularly information that reveals whether the Commission is meeting its statutory responsibilities or information upon which the Commission bases a decision that affects the public health and safety.

(b) In reviewing proposed information disclosures, the Commission will consider disclosing the material on the basis of whether release of the information, when taken as a whole, was prepared or is maintained in the course of or to support an activity of the Commission designed to accomplish one or more of the statutory purposes.

Subpart E—Statutory Exceptions of Section 6(b)(4)

§ 1101.41 Generally.

(a) *Scope.* This Subpart describes and interprets the exceptions to the requirements of section 6 (b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to (1) information about a product reasonably related to the subject matter of an imminent hazard action in federal court; (2) information about a product which the Commission has reasonable cause to believe violates the prohibited act

section of one of the acts the Commission administers and the information is reasonably related to the alleged violations; (3) information in the course of or concerning a rulemaking proceeding; or (4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

(b) *Application to transferred act.* The Commission will apply the exceptions contained in section 6(b)(4) to those provisions in the transferred acts, comparable to the specific provisions in the CPSA to which section 6(b)(4) applies.

§ 1101.42 Imminent hazard exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products)."

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA, 15 U.S.C. 2061, in a United States district court. Once the exception applies, information may be disclosed to the public while the proceeding is pending without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous. Upon termination of the proceeding, information filed with the court or otherwise made public is not subject to section 6(b). Information in the Commission's possession which has not been made public is subject to section 6(b).

§ 1101.43 Prohibited acts exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of a "prohibited act" section under any of the statutes administered by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has "reason to believe" there has occurred a violation of sections 19(a) (1), (2), and (5) or (10) of the CPSA which pertains to a consumer product. This exception also applies once the Commission has "reasonable cause to believe" there has occurred a "prohibited act" pertaining to a product regulated under the transferred acts. Once the exception applies, the Commission may disclose information to the public without following the requirements of section

6(b)(1) if the information concerning the product is reasonably related to the violative practice or condition.

§ 1101.44 Rulemaking proceeding

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information "in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking) . . . under this Act."

(b) *Scope of exception.* This exception applies upon publication in the Federal Register of an advance notice of proposed rulemaking or, if no advance notice of proposed rulemaking is issued, upon publication in the Federal Register of a notice of proposed rulemaking, under any of the acts the Commission administers. Once the exception applies, the Commission may publicly disclose information in the course of the rulemaking proceeding which is presented during the proceeding or which is contained or referenced in the public record of the proceeding and or which concerns the proceeding without following the requirements of section 6(b)(1). Documentation supporting the public record is also excepted from section 6(b). A rulemaking proceeding includes a proceeding either to issue, to amend, or to revoke a rule.

(c) The phrase "in the course of" refers to information disclosed as part of the proceeding and may, therefore, include information generated before the proceeding began and later presented as part of the proceeding. A rulemaking proceeding ends once the Commission has published the final rule or a notice of termination of the rulemaking in the Federal Register.

(d) The phrase "concerning" refers to information about the proceeding itself both after the proceeding has begun and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding. By issuing opinions and public statements, the Commissioners, and the presiding official, who act as decisionmakers, may also publicly explain their individual votes and any decision rendered.

§ 1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information in the course

of or concerning . . . [an] adjudicatory proceeding . . . under this Act."

(b) *Scope of exception.* This exception applies once the Commission begins an administrative adjudication under the CPSA. The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FAA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15(c) or (d), 17(a)(1) or (3), or 20 of the CPSA (15 U.S.C. 2064(c) or (d), 2066(a)(1), or (3), or 2069); section 15 of the FHSA (15 U.S.C. 1274); section 5(b) of the FFA, (15 U.S.C. 1194(b)); or section 4(c) of the PPPA (15 U.S.C. 1473(c)). An adjudicatory proceeding ends when the Commission issues a final order, 16 CFR 1025.51-1025.58.

(c) The phrase "in the course of" refers to information disclosed as part of the adjudication, whether in documents exchanged during discovery filed or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began.

(d) The phrase "concerning" refers to information about the administrative adjudication itself, both once it begins and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding including, for example, the effectiveness of any corrective action such as information on the number of products corrected as a result of a remedial action. By issuing opinions and public statements, the Commissioners and the presiding official, who act as decisionmakers, may publicly explain their individual votes and any decision rendered.

§ 1101.46 Other administrative or judicial proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information in the course of or concerning any . . . other administrative or judicial proceeding under this Act."

(b) *Scope of exception.* This exception applies to an administrative or judicial proceeding, other than a rulemaking or administrative adjudicatory proceeding, under the CPSA, FHSA, FFA, or PPPA. Proceedings within this exception include:

(1) A proceeding to act on a petition to start a rulemaking proceeding. This proceeding begins with the filing of a petition and ends when the petition is denied or, if granted, when the rulemaking proceeding begins.

Information subject to the exception for petition proceedings is the petition itself and the supporting documentation, and information subsequently compiled by the staff and incorporated or referenced in the staff briefing papers for and recommendation to the Commission.

(2) A proceeding to act on a request for exemption from a rule or regulation. This proceeding begins with the filing of a request for exemption and ends when the request is denied or, if granted, when the Commission takes the first step to implement the exemption, e.g., when an amendment to the rule or regulation is proposed.

(3) A proceeding to issue a subpoena or general or special order. This proceeding begins with a staff request to the Commission to issue a subpoena or general or special order and ends once the request is granted or denied.

(4) A proceeding to act on a motion to quash or to limit a subpoena or general or special order. This proceeding begins with the filing with the Commission of a motion to quash or to limit and ends when the motion is granted or denied.

(5) Any judicial proceeding to which the Commission is a party. This proceeding begins when a complaint is filed and ends when a final decision (including appeal) is rendered with respect to the Commission.

(6) Any administrative proceeding to which the Commission is a party, such as an administrative proceeding before the Merit Systems Protection Board or the Federal Labor Relations Authority. This proceeding begins and ends in accordance with the applicable regulations or procedures of the administrative body before which the proceeding is heard.

(7) A proceeding to obtain a retraction from the Commission pursuant to Subpart F of these rules. This proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted.

(c) *In the course of or concerning.* The phrase "in the course of or concerning" shall have the same meaning as set forth in either § 1101.44 (c) and (d) or § 1101.45 (c) and (d), whichever is applicable.

Subpart F—Retraction

§ 1101.51 Commission Interpretation.

(a) *Statutory provisions.* Section 6(b)(7) of the CPSA provides: If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects

adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(b) *Scope.* Section 6(b)(7) applies to inaccurate or misleading information only if it is *adverse*—i.e., if it reflects adversely either on the safety of a consumer product or on the practices of a manufacturer, private labeler, distributor or retailer. In addition, the Commission will apply section 6(b)(7) to information about products, and about manufacturers and private labelers of products, the Commission may regulate under any of the statutes it administers. Section 6(b)(7) applies to information already disclosed by the Commission, members of the Commission, or the Commission employees, agents, contractors or representatives in their official capacities.

§ 1101.52 Procedure for retraction.

(a) *Initiative.* The Commission may retract information under section 6(b)(7) on the initiative of the Commission, upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, or upon the request of any other person in accordance with the procedures provided in this section.

(b) *Request for retraction.* Any manufacturer, private labeler, distributor or retailer of a consumer product or any other person may request a retraction if he/she believes the Commission or an individual member, employee, agent, contractor or representative of the Commission has made public disclosure of inaccurate or misleading information, which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm. The request must be in writing and addressed to the Secretary, CPSC, Washington, D.C. 20207.

(c) *Content of request.* A request for retraction must include the following information to the extent it is reasonably available:

(1) The information disclosed for which retraction is requested, the date on which the information was disclosed, the manner in which it was disclosed, who disclosed it, the type of document (e.g., letter, memorandum, news release) and any other relevant information the firm has to assist the Commission in identifying the information. A photocopy of the disclosure should accompany the request.

(2) A statement of the specific aspects of the information the firm believes are inaccurate or misleading and reflect adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(3) A statement of the reasons the firm believes the information is inaccurate or misleading and reflects adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(4) A statement of the action the firm requests the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made.

(5) Any additional data or information the firm believes is relevant.

(d) *Commission action on request.* The Commission will act expeditiously on any request for retraction within 30 working days unless the Commission determines, for good cause, that a longer time period is appropriate. If the Commission finds that the Commission or any individual member, employee, agent contractor or representative of the Commission has made public disclosure of inaccurate or misleading information that reflects adversely either on the safety of the firm's product or the practices of the firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made. If the Commission finds that fuller disclosure is necessary, it will publish a retraction in the manner it determines appropriate under the circumstances.

(e) *Notification to requester.* The Commission will promptly notify the requester in writing of its decision on request for retraction. Notification shall set forth the reasons for the Commission's decision.

Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

§ 1101.61 Generally.

(a) *Generally.* In addition to the requirements of section 6(b)(1), section 6(b)(5) of the CPSA imposes further limitations on the disclosure of information submitted to the Commission pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

(b) *Criteria for disclosure.* Under section 6(b)(5) the Commission shall not disclose to the public information which is identified as being submitted pursuant to section 15(b) or which is treated by the Commission staff as being submitted pursuant to section 15(b). Section 6(b)(5) also applies to information voluntarily submitted after a firm's initial report to assist the Commission in its evaluation

of the section 15 report. However, the Commission may disclose information submitted pursuant to section 15(b) in accordance with section 6(b)(1)-(3) if:

(1) The Commission has issued a complaint under section 15 (c) or (d) of the CPSA alleging that such product presents a substantial product hazard; or

(2) In lieu of proceeding against such product under section 15 (c) or (d), the Commission has accepted in writing a remedial settlement agreement dealing with such product; or

(3) The person who submitted the information under section 15(b) agrees to its public disclosure.

§ 1101.62 Statutory exceptions to section 6(b)(5) requirements.

(a) *Scope.* The limitations established by section 6(b)(5) do not apply to the public disclosure of:

(1) Information with respect to a consumer product which is the subject of an action brought under section 12 (*see* Section 1101.42);

(2) Information about a consumer product which the Commission has reasonable cause to believe is in violation of a "prohibited act" section under any of the statutes administered by the Commission (*see* Section 1101.43); or

(3) Information in the course of or concerning a judicial proceeding (*see* Section 1101.45).

§ 1101.63 Information submitted pursuant to section 15(b) of the CPSA.

(a) Section 6(b)(5) applies only to information provided to the Commission by a manufacturer, distributor, or retailer which is identified by the manufacturer, distributor or retailer, or treated by the Commission staff as being submitted pursuant to section 15(b).

(b) Section 6(b)(5)'s limitation also applies to the portions of staff generated documents that contain, summarize or analyze such information submitted pursuant to section 15(b).

(c) Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.

Subpart H—Delegation of Authority to Information Group

§ 1101.71 Delegation of authority.

(a) *Delegation.* Pursuant to section 27(b)(9) of the CPSA 15 U.S.C. 2076(b)(9) the Commission delegates to the General Counsel or his or her senior staff designees, the authority to render all decisions under this Part concerning the release of information subject to section 6(b) when firms have furnished section 6(b) comment except as provided in paragraph (b). The Commission also delegates to the Secretary of the Commission, or his or her senior staff designee, authority to make all decisions under this Part concerning the release of information under section 6(b) when firms have failed to furnish section 6(b) comment or

have consented to disclosure except as provided in paragraph (b) of this section. The General Counsel shall have authority to establish an Information Group composed of the General Counsel and the Secretary of the Commission or their designees who shall be senior staff members.

(b) *Findings not deleted.* The Commission does not delegate its authority—

(1) To find, pursuant to section 6(b)(1) and § 1101.23(b) of this Part, that the public health and safety requires less than 30 days advance notice of proposed disclosures of information.

(2) To find, pursuant to section 6(b)(2) and § 1101.25(b) of this Part, that the public health and safety requires less than ten (10) days advance notice of its intent to disclose information claimed to be inaccurate;

(3) To decide whether it should take reasonable steps to publish a retraction of information in accordance with section 6(b)(7) and § 1101.52 of this Part.

(c) *Final agency action; Commission decision.* A decision of the General Counsel or the Secretary or their designees shall be a final agency decision and shall not be appealable as of right to the Commission. However, the General Counsel or the Secretary may in his or her discretion refer an issue to the Commission for decision.

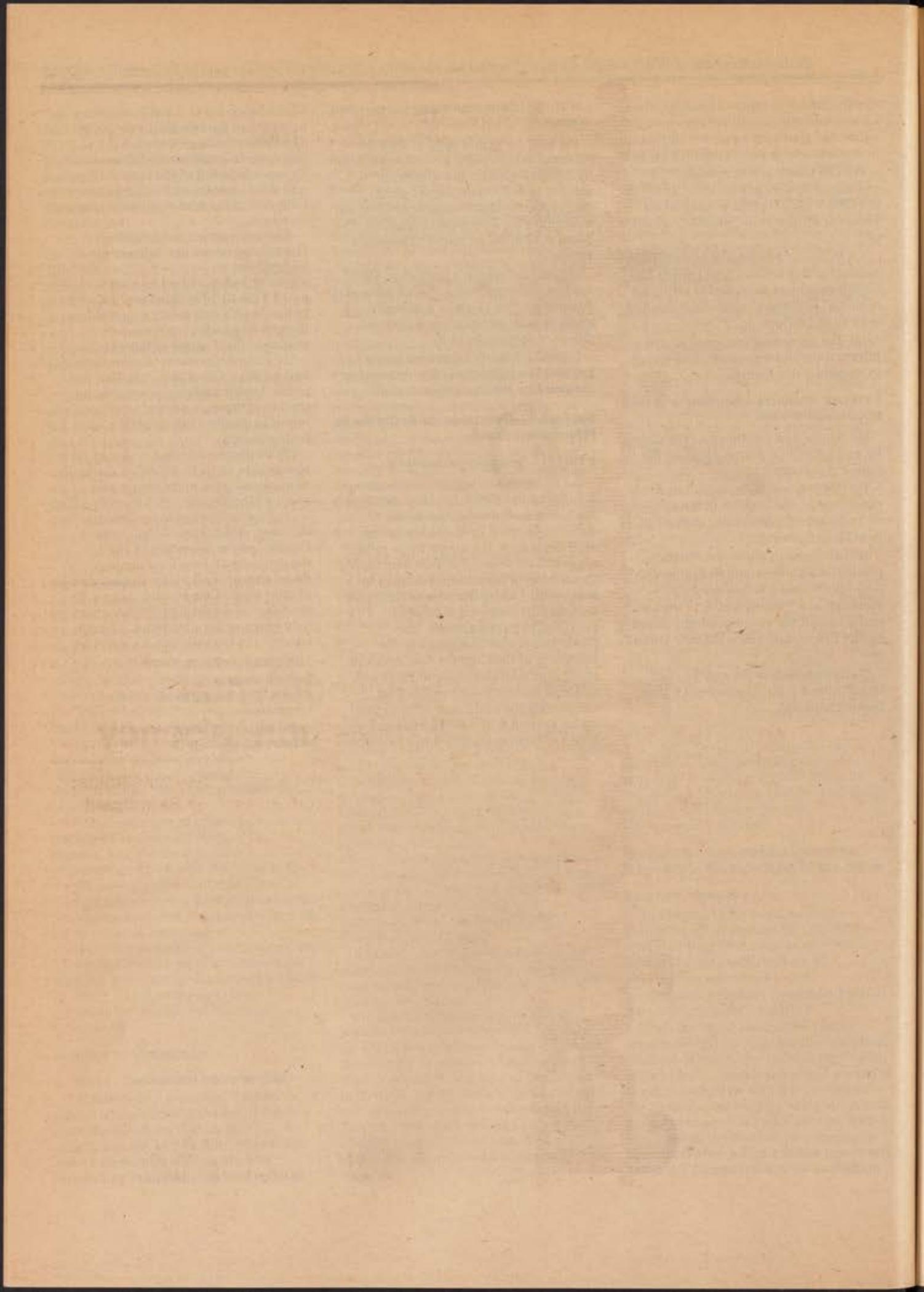
Dated: December 21, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[PR Doc. 83-3492 Filed 12-28-83; 8:45 am]

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Federal Register

Thursday
December 29, 1983

Part III

Environmental Protection Agency

Substituted Polyglycidyl Benzeneamine;
Proposed Determination of Significant
New Uses

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50510; TSH-FRL 2446-5]

Substituted Polyglycidyl Benzeneamine; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a Significant New Use Rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), to require persons to notify EPA at least 90 days before manufacturing, importing, or processing a substance for a "significant new use." Under section 5(a)(2), EPA is proposing that manufacture or processing without protective equipment and warnings to workers, distribution without certain labeling, and use in spray applications be designated as a "significant new use" of the substance known generically as substituted polyglycidyl benzeneamine. The substance was the subject of premanufacture notice (PMN) P-83-394. EPA believes that the new uses defined in this proposed rule may present a risk to health.

DATES: Written comments should be submitted by February 27, 1984.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-50510. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:
[OMB control number: 2070-0012]

I. Introduction

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a

chemical substance is a significant new use. EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is generally subject to the same statutory requirements and procedures as a PMN submitted under section 5(a)(1)(A). In particular, these include the information submission requirements of section 5(d)(1) and section 5(b), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5(e) and section 5(f). If EPA does not take regulatory action under sections 5, 6, or 7 to control a substance on which it has received a SNUR notice, section 5(g) requires the Agency to explain its reasons for not taking action in the **Federal Register**. Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707.

II. PMN Background

On January 17, 1983, EPA received a PMN which the Agency designated as P-83-394. EPA announced receipt of the PMN in the **Federal Register** of February 4, 1983 (48 FR 5304).

The notice submitter, the Celanese Corporation, claimed the chemical identity, specific proposed use, and proposed production volume of the PMN substance as confidential business information. The notice submitter stated in the PMN that the substance, known generally as substituted polyglycidyl benzeneamine, will be used as an intermediate. In this preamble and the proposed rule the substance will be referred to by its generic name and PMN number.

In the PMN submission, the notice submitter included no test data. However, late in the PMN review process, the notice submitter submitted test data on the PMN substance which are summarized below.

Skin irritation (rabbits)—severely irritating.

Eye irritation (rabbits)—severely irritating.

Ames assay—positive (with and without metabolic activation).

EPA's general literature search provided no additional information on the toxicity of the substance. However, the Agency identified structural analogs of the substance. The Agency review relied in part upon information submitted to EPA under section 8(e) of

TSCA on one of these analogs, and upon information for several other analogs which is available in published literature. Based upon the analogy of the chemical structure of P-83-394 to these substances, the Agency believes P-83-394 is likely to be readily absorbed by the skin, lungs, and gastrointestinal tract. EPA also found that the substance may cause carcinogenicity, skin and eye irritation, skin sensitization, reproductive effects, and liver and kidney effects. The Agency concluded that the uncontrolled manufacturer, processing, use, and distribution in commerce of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA, pending the development of information sufficient to make a reasoned evaluation of its health effects.

EPA believes that use of appropriate protective equipment will protect persons exposed to P-83-394 from any unreasonable risk. The Agency negotiated a section 5(e) Consent Order with the notice submitter which requires use of certain protective equipment and certain packaging and labeling until data are available to determine the risks from the substance more accurately. The Order became effective August 17, 1983, and EPA will revoke the Order on the effective date of a final SNUR.

To protect workers from dermal exposure to the substance, the Consent Order requires the use of impervious gloves, a face shield, and clothing which covers exposed areas of the arms, legs, and torso during manufacture, processing, use, and cleanup of P-83-394. The Order also places certain packaging and distribution restrictions on the notice submitter to provide that similar protective equipment will be used by purchasers of P-83-394 and formulations containing the substance. The Order requires that written notification of potential health effects be given to workers exposed to P-83-394 and to purchasers of P-83-394. The Order also imposes certain recordkeeping requirements.

The Agency believes that a section 5(e) Consent Order which allows controlled commercial production and distribution of the substance, pending the development of further data, is appreciably less burdensome than a section 5(e) Order which prohibits manufacture of the substance until adequate data are submitted to EPA. In addition, such an approach protects human health by requiring adequate exposure controls pending the development of data.

III. Reasons for Proposing This Rule

EPA issued a section 5(e) Consent Order to limit manufacture, processing, distribution, and use of P-83-394 pending the development of further information on the substance's potential health effects. However, the Order, by its terms, applies only to the notice submitter. When the notice submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When P-83-394 is on the Inventory, another person may manufacture or process the substance without the controls imposed by the Order. Therefore, EPA is proposing to designate manufacture or processing of the substance without specified controls and labeling a significant new use so that the Agency can review that use before it occurs. Inhalation exposures were not a potential risk under the conditions expected to occur during the use specified in the PMN. Therefore, the Order does not require inhalation controls. However, other potential uses for this substance may exist which would result in inhalation exposures to workers. The Agency wishes to review all uses where inhalation of P-83-394 may occur to assess that risk before those uses begin. Therefore, use of the substance in spray applications is also proposed as a significant new use of P-83-394.

The notice submitter claimed the specific chemical identity of P-83-394 as confidential business information. Identification of the analogs EPA relied on in its analysis could reveal the specific identity of the PMN substance. Therefore, EPA is unable to discuss in detail its basis for toxicity concerns for P-83-394. While under section 14(a) (4) of TSCA, the Agency may disclose confidential business information relevant in any proceeding under TSCA "disclosure in such a proceeding shall be made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired as to justify disclosure of confidential business information. Therefore, EPA has decided not to disclose any such information at this time. The Agency specifically requests comments on SNUR rulemakings involving confidential business information.

IV. Proposed Significant New Uses

To determine what would constitute a significant new use of this chemical substance, EPA considered relevant

information about the toxicity of the substance and likely exposures associated with possible new uses, including the four factors listed in section 5(a) (2) of TSCA. In particular, EPA considered the extent to which potential new uses may change the type, magnitude, and duration of exposure of humans to P-83-394.

Based on these considerations, EPA proposes to define the significant new uses as they appear in proposed § 721.40(a)(2) below. Specifically, the Agency proposes that a significant new use of substituted polyglycidyl benzeneamine would occur if the substance is used in spray applications, or if manufacturers, processors, and distributors in commerce of the substance fail to establish and enforce a program whereby: (1) Workers who may be exposed to P-83-394 wear (A) gloves which cover the arm up to the elbow and which have been determined to be impervious to the substance under conditions of exposure (gloves may be determined to be impervious to P-83-394 through standard testing methods or by relying on the glove supplier's specifications for the gloves selected), (B) a face shield of at least eight inches in length, and (C) clothing covering any other exposed part of the arms, legs, and torso; (2) all workers required to wear protective equipment are informed of the health concerns which may be presented by the substance; and (3) packages containing P-83-394 or formulations containing the substance are labeled according to the terms specified in the proposed rule.

Manufacture or processing without use of impervious gloves, face shields, and other clothing is expected to increase greatly dermal exposure to P-83-394. Use of P-83-394 in spray applications is expected to increase the likelihood that workers will inhale the substance. Worker protections and safe handling of the substance are expected to mitigate the risks which may be presented by dermal contact with the substance. The labeling and informational requirements of this rule should also reduce the likelihood of exposures among "downstream" persons by promoting responsible procedures for the handling and use of P-83-394. However, in spray-applications, inhalation exposures to P-83-394 may vary greatly depending on the concentration of the substance in the spray applied formulation, the method of application, and the worker protection equipment employed. Therefore, until EPA has sufficient information on the health effects of P-83-394, the Agency believes there is a sufficient basis to

consider such use a significant new use for which notification should be required. EPA invites comments on these provisions of the rule and suggestions for alternative methods of handling these issues.

EPA has already determined in the section 5(e) Consent Order that unrestricted manufacture, processing, or distribution in commerce of P-83-394 may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the new uses of the substance would be significant.

V. Alternatives

EPA considered other possible approaches. One alternative is to promulgate a section 8(a) reporting rule for the substance. Under such a rule, EPA could require any person to report to EPA before manufacturing or processing the substance. Because the substance is subject to a section 5(e) Order, the normal small business exemption of section 8(a) would not apply. A section 8(a) rule would allow the Agency to require reporting of specific information such as increases in production volume of P-83-394. However, the use of section 8(a) rather than SNUR authority has one major weakness. If EPA received a report under section 8(a) indicating that a person intended to manufacture or process the substance without appropriate controls, the Agency could not take action under section 5(e) as it can under a SNUR and therefore would not be able to regulate the substance pending development of information. Rather, EPA would have to obtain test data under section 4 and then, if necessary, regulate the substance under section 6. This approach would allow unnecessary risks to human health during the time needed for data development. In addition, the PMN submitter would be at a competitive disadvantage because the section 5(e) Order applies only to that company.

The Agency has the authority to regulate substances under section 6 of TSCA. However, section 6(a) specifies that the Agency may regulate only if there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture "presents or will present" an unreasonable risk to health. As stated previously, there is insufficient information to perform a reasoned evaluation of the health effects of this substance. Therefore, the Agency cannot state at this time that this substance "presents or will present" an

unreasonable risk, but only that it "may present" an unreasonable risk of injury to health. Therefore, the Agency cannot presently use section 6 to regulate this substance.

VI. Recordkeeping

In addition to the requirements stated in the proposed significant new uses, the Agency is proposing certain recordkeeping requirements. To ensure compliance with this SNUR and to assist enforcement efforts, EPA is proposing under its authority in sections 5 and 8(a) of TSCA, that the following records be maintained for five years after the date of their creation by persons who import, manufacture, or process P-83-394:

1. The names of persons informed, the date they are informed, and the means by which they are informed in accordance with § 721.40(a)(2)(ii)(A) of the proposed definition.
2. The names and addresses of any person to whom the substance is sold or transferred and the dates of any such sale or transfer.
3. The method used to determine that the protective gloves are impervious to P-83-394, the date, and the results of that determination.

This proposed recordkeeping is expected to encourage compliance with this proposed rule when promulgated and to support EPA's enforcement efforts. The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult.

Section 5(a)(2) of TSCA does not explicitly provide for recordkeeping of the type in paragraph (g) of this proposed rule. However, as discussed above, EPA believes that such recordkeeping is necessary to effectively implement and enforce the requirements of the SNUR. EPA believes that two TSCA authorities support the recordkeeping in this proposed rule. First, EPA believes there is inherent authority in section 5 of TSCA to require the keeping of records reasonably necessary to implement the mandate of section 5. EPA has already exercised this authority in the PMN rule recordkeeping requirements in 40 CFR 720.78. Clearly, there is no way to determine whether a manufacturer or processor is undertaking a new use of the type in this proposed rule unless the manufacturer or processor is required to keep records of its activities to show that the new use has not occurred. Otherwise, EPA would not be able to determine whether a violation has occurred unless the manufacturer or processor was observed in violation.

Second, section 8(a) of TSCA provides broad authority for EPA to require manufacturers and processors of chemical substances to keep records. Generally, a section 8(a) recordkeeping requirement does not apply to small manufacturers and processors, but in this case a section 5(e) Order is in effect for the chemical substance in question. Thus, under section 8(a)(3)(A)(ii) of TSCA, EPA can require recordkeeping by small manufacturers and processors as well. However, by its own terms, the section 5(e) Order will automatically be revoked when the SNUR goes into effect. EPA chose to write this and other section 5(e) Orders in this fashion to ensure that the original PMN submitter would be treated in the same manner as other manufacturers and processors once the SNUR is in effect.

EPA believes that revocation of the section 5(e) Order after the SNUR and its accompanying section 8(a) recordkeeping requirements go into effect would not invalidate the recordkeeping requirement for small manufacturers and processors. Congress clearly believed that small businesses should be subject to section 8(a) when the particular chemical substance in question was the subject of a specific regulatory action and finding. In the case the "may present an unreasonable risk" finding in the section 5(e) Order would remain valid even though the Agency has revoked the Order for administrative reasons.

As an alternative to the recordkeeping requirements in paragraph (h) of this proposed rule, EPA is considering making failure to keep certain records a significant new use. Thus, 90 days before any manufacturer or processor could cease keeping the specified records, it would be required to submit a notice to EPA. Any person who failed to keep the records without having notified EPA would be in violation of section 5 of TSCA and of the rule.

Another alternative being considered by the Agency would require recordkeeping by all persons importing, manufacturing, or processing a chemical substance subject to a 5(e) Order, in any fashion which does not constitute a significant new use.

EPA invites comments on these alternative or any other suggested recordkeeping requirements.

VII. Persons Subject to SNUR Notice Requirements

Section 5(a)(1)(B) requires persons to submit a SNUR notice to EPA before they manufacture, import, or process a substance subject to a SNUR for a significant new use. The language of this proposal makes clear that

manufacturers, importers, and processors who do not employ controls are subject to SNUR notice requirements. Additionally, manufacturers, importers, or processors of P-83-394 for subsequent use in spray applications are also subject to SNUR notice requirements. Since both manufacturers (including importers) and processors are legally subject to SNUR notice requirements, EPA may require both manufacturers and processors to submit complete SNUR notices. However, this may be unnecessary where it could result in the Agency receiving the same information from both parties. EPA has considered allowing manufacturers and processors to decide which party should submit what information to EPA as long as all appropriate information is submitted. This approach would be appropriate when the significant new use would occur "downstream" from the manufacture or processing operations. However, for this substance, the exposure and hazard concerns involve workers in the manufacturing and processing operations as well as exposures resulting from "downstream" use in spray applications. The points and levels of exposure and the number of persons exposed will be unique to each manufacturer, processor, and downstream user. To assess the effects resulting from these significant new uses, the Agency proposes to require any person who intends to manufacture, import, or process the substance for a defined significant new use to submit a SNUR notice. Using this approach, if a person plans to manufacture or process this substance (a) without the designated protective equipment, worker notification, and labeling; or (b) for use in spray applications, that person would be required to submit a SNUR notice.

If a person used the designated protective equipment in manufacturing this substance (or imported the substance) but then sold the substance to a processor who intended to process the substance without using the designated protective equipment, both the manufacturer and processor would be legally responsible for submitting a SNUR notice. Similarly, if a person manufactured or processed the substance using the specified protective equipment but sold the substance for its use "downstream" in spray applications, that person would be legally responsible for submitting a SNUR notice. EPA would be willing to accept a SNUR notice from either the manufacturer or the processor in the chain of manufacturing, processing, and use of P-

83-394, providing that person can demonstrate (in a prenotice consultation) that he is the person most familiar with the exposures resulting from the new use being reported and capable of submitting complete information. Of course, in situations where a person is reporting on use of the substance in spray applications, that person should consult with the "downstream" user of the substance to ensure that accurate information on exposures associated with that use is submitted in the SNUR notice. In situations where more than one person has information relevant to EPA's risk assessment, the Agency would encourage those persons to make a joint submission to provide complete information. In cases where the notice submitter does not have complete information about the significant new use and another person did not submit that information in a joint submission, EPA could take action under section 5(e) to regulate the new use pending submission of the information. To resolve any questions, the Agency encourages potential SNUR notice submitters to consult EPA prior to submitting a notice.

VIII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA recognizes that when chemical substances proposed to be subject to a SNUR are added to the Inventory they may be manufactured or processed for "significant new uses" as defined in the proposal before promulgation of the rule. EPA has decided that the intent of section 5(a)(1)(B) can be best served by determining whether a use is "new" or "existing" as of the proposal date of the SNUR. If EPA considered uses commenced during the proposal period to be "existing" rather than "new" uses, it would be almost impossible for the Agency to establish SNUR notice requirements since any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if substances are manufactured or processed between proposal and promulgation for proposed significant new uses, the Agency will still consider such uses to be "new" if those particular significant new uses are included in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture or processing for a "significant new use" during the proposal period. However, this proposal puts those persons on notice of that potential disruption, and they commence

those uses at their own risk. The Agency specifically requests comment on ways to minimize this disruption.

IX. Procedures for Informing Persons of the Existence of This Significant New Use Rule

The final rule will be published in the Federal Register and codified in the Code of Federal Regulations (CFR). While this will provide legal notice of the rule, EPA is exploring additional ways of informing potential SNUR notice submitters of the existence of the rule.

EPA intends to publish information concerning final SNURs in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA may also use the TSCA Chemical Substance Inventory to inform persons of the existence of final SNURs through footnotes to the chemical identities of substances subject to SNURs. The footnotes would refer to an Inventory Appendix which would give a Federal Register or CFR citation for the SNUR. As a variation of this approach, the Agency is considering publishing a list of substances subject to SNURs as an Inventory Appendix.

Any person who intends to manufacture or process a substance for the first time should check the Inventory to determine if the substance is listed. If a person finds that the substance is on the Inventory, but subject to a SNUR, he can determine whether he would be subject to reporting by contacting EPA or reviewing the rule. Because an updated Inventory is published only periodically, manufacturers and processors would also rely on the Federal Register and the TSCA Chemicals-in-Progress Bulletin. Since EPA maintains a current copy of the Inventory, any questions could be resolved by consulting EPA.

Determining whether a chemical substance is subject to a SNUR is more difficult when the identity of the chemical substance involved is confidential. In this case, the chemical identity of the substance was claimed confidential in the PMN. EPA is proposing to keep the specific identity of the substance confidential in the final rule. The substance would be referred to by a generic chemical name. In printed versions of the Inventory, there would be a footnote indicating that a chemical substance masked by the generic name is subject to a SNUR.

EPA is proposing that any person proposing to manufacture, import, or process a chemical substance within the generic name would be able to ask EPA whether its chemical substance is

subject to the SNUR. To make such a request, the person would have to show EPA that the person has a *bona fide* intent to manufacture, import, or process the substance in question. The process proposed for doing so is very similar to that for manufacturers and importers to show a *bona fide* intent to manufacture or import under 40 CFR 710.7(g)(2) of the Inventory Reporting Rules and 40 CFR 720.25(b)(2) of the Premanufacture Notification Rules which were published in the Federal Register of May 13, 1983 [48 FR 21722]. EPA would evaluate the SNUR inquiry under the same criteria and would answer the inquiry by either informing the requester that the substance is or is not subject to the SNUR or informing the requester that sufficient information has not been furnished to show a *bona fide* intent to manufacture, import, or process the substance in question. If a manufacturer or importer makes an inquiry under either § 720.7(g) of the Inventory Reporting Rules or § 720.25(b) of the Premanufacture Notification Rules and EPA informs the requester that the substance is on the Inventory, EPA will also inform the manufacturer or importer whether the substance is subject to a SNUR.

This procedure would allow manufacturers, importers, and processors to determine whether they are subject to the rule while protecting confidential business information from unnecessary disclosure. An alternative approach would be to publish the specific chemical identity of the substance in the final rule. EPA is particularly interested in comments on these approaches and any other alternatives.

A. Notification Issues for Processors and New Uses Which May Result in Workplace Exposure

EPA believes all manufacturers and most processors will know the identities of the substances they manufacture or process and therefore can follow the above procedures. EPA recognizes, however, that some processors may not know the identity of substances they process and, as a result, may not know they are subject to an SNUR. At the same time, manufacturers may not always know what their customers do with substances supplied to them. Therefore, EPA has identified several alternatives to address liability of manufacturers, importers, and processors regarding the workplace exposure controls (including worker notification and labeling) provision of this proposed SNUR.

First, with respect to a significant new use occurring because dermal exposure controls are not employed, if an SNUR notice had not been submitted, EPA could hold manufacturers, importers, and processors who sell P-82-394 responsible if any of their customers process the substance without using the specified controls, worker notification, and labeling without submitting an SNUR notice even if the manufacturer, importer, or processor did not know that the customer intended to process the substance for that significant new use. However, manufacturers, importers, and processors who sell P-83-394 could avoid liability by informing each of their customers in writing that the substance is subject to an SNUR prescribing certain workplace exposure controls and maintaining copies of each notification. But, if the manufacturer, importer, or processor has reason to believe that the purchaser is processing that substance without controls and therefore commencing a significant new use before an SNUR notice is submitted, the seller would be required immediately to cease sales of P-83-394 to the customer and notify EPA enforcement authorities to avoid liability. The seller could not resume sales of the substance to that customer until an SNUR notice had been submitted by the manufacturer, importer, or processor and the notice review period had run.

Second, EPA could hold processors liable if they process the substance for a significant new use by failing to conform to the worker exposure control provisions of this proposal without submitting an SNUR notice, even if they did not know the identity of the substance or that the substance was subject to an SNUR. However, processors could avoid liability by asking each of their suppliers to verify in writing that the substance is not subject to an SNUR, receiving a negative response, and maintaining records of each response. EPA believes that many processors ask suppliers to certify that chemical substances of unknown identity are on the Inventory. Therefore, the Agency believes that processors can similarly ask suppliers whether substances are subject to SNUR notice requirements. This alternative is consistent with the reporting alternative above in which EPA proposes to require submission by processors of SNUR notices for their significant new uses.

Third, EPA could require manufacturers and processors of this substance to notify, through a label or otherwise, any person to whom they distribute any of the substance that the

substance is subject to this SNUR. EPA could accomplish this in one of two ways. EPA believes, that, where necessary, there is inherent authority in section 5(a)(2) of TSCA to require such notification since lack of notification would impair compliance with the rule. In addition, EPA could define distribution of this substance without a notification as a significant new use; before persons could distribute the substance without providing notification to their purchasers, they would have to submit a SNUR notice to EPA.

B. Notification Issues Where the New Use Is "Downstream" Use in Spray Applications

The spray application new use provisions of this proposal must be addressed separately because persons who ultimately commence this new use of P-83-394 may not also be manufacturers, importers, or processors who must submit the significant new use notification to EPA. The Agency is proposing to hold manufacturers, importers, or processors legally liable if any person to whom they sell P-83-394 uses the substance in spray applications prior to submission and review of a SNUR notice. Consequently, manufacturers, importers, or processors of the substance should ensure that persons to whom they sell or transfer P-83-394 (or formulations containing the substance) do not use the substance in spray applications without, in the case of purchasers who are also processors, (1) submitting a SNUR notification; or (2) in the case of users who are not also processors, notifying the selling manufacturer, importer, or processor of (A) the purchaser's intent to spray apply P-83-394, (B) the relevant exposure information resulting from that use, and (C) awaiting the seller's submission of a SNUR notification and the expiration of the SNUR notice review period.

EPA has considered the following alternatives for manufacturers, importers, and processors liability regarding spray application of P-83-394.

First, manufacturers and processors who sell P-83-394 in a chemical state which makes it impossible to be used in spray applications, would not be required to submit a SNUR notification. Conversely, the Agency could require that the manufacturer, importer, or processor who transfers the substance in a physical state suitable for a later use in a spray-applied formulation (since the seller could not state conclusively that the new use will not occur) would have to submit a SNUR notification. Without information on exposures resulting from that potential use or without test data refuting EPA's

concerns for this substance, the SNUR submitter would probably become subject to a section 5(e) Order prohibiting spray applications.

Secondly, EPA could determine that it is sufficient if manufacturers, importers, or processors who distribute P-83-394 include provisions in any contract of sale which require that any purchaser who intends to spray apply the substance will (1) submit a SNUR notification if that person is also a processor or (2) notify the seller of the relevant information required by EPA and await the seller's submission of a SNUR notice and the expiration of the SNUR notice review period. Those terms would also have to require purchasers to agree to include similar contract terms in any resale agreement or to agree not to resell the substance or formulations containing the substance.

Third, EPA could require only that manufacturers, importers, and processors of this substance notify any person to whom they distribute in spray applications is a violation of a SNUR, that violation could subject a person to penalties under TSCA, and that notification of that new use must first be made to EPA by the manufacturer, importer, or processor of that substance before such use may occur.

The Agency specifically requests comments on these approaches as well as on other approaches to ensure that SNUR notice requirements are followed.

X. Required Information

The Agency proposes that SNUR notice submitters use the premanufacture notification form and follow the PMN regulations published in the *Federal Register* of May 13, 1983 (48 FR 21722). EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new use. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Test Data

EPA recognizes that under TSCA section 5, person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in his possession or control and to describe any other data known to him or reasonably ascertainable by him. However, in view of the potential health risk that may be posed by a significant new use of P-83-394, a more reasoned evaluation of the risks posed by this substance would require additional data

on carcinogenic effects, reproductive effects, skin sensitization, and kidney and liver effects. These data might be generated by a two-year bioassay, a two-generation reproductive study in the rat, a three-week patch test in guinea pigs, and a subchronic toxicity (90-day feeding) study, respectively. However, these studies may not be the only means of addressing the potential risks.

EPA encourage potential SNUR notice submitters to test the substance for these concerns or the submit other data, such as workplace exposure information, which indicate the potential risk presented to workers. SNUR notices submitted for significant new uses without test data may be subject to EPA action under section 5(e).

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance.

Test data should be developed according to good laboratory practices and through the use of methodologies generally accepted at the time the study is initiated. Failure to do so may lead the Agency to find the data to be insufficient to evaluate reasonably the health effects of the substance.

XII. EPA Review of Notice

EPA proposes to review SNUR notices the same way it reviews PMNs and to subject such notices to the procedures appearing in the PMN rule. EPA will issue a summary of each notice in the *Federal Register* under section 5(d)(2). The review period for the notice will run 90 days from EPA's receipt of the notice. Under section 5(c), this period may be extended up to an additional 90 days for good cause. The submitter may not manufacture, import, or process the substance for the significant new use until the review period, including extensions, has expired.

The Agency may regulate the substance during the review period. If a significant new use notice is submitted for a chemical substances without information sufficient to judge the toxicity and exposure potential of the substance, EPA may issue a section 5(e) Order limiting or prohibiting the new use until sufficient information is developed. In addition, section 5(f) authorize EPA to prohibit a significant new use that presents or will present an unreasonable risk to health or the environment. EPA may also refer information in a SNUR notice to other EPA offices and other Federal agencies. If EPA does not take section under section 5, 6, or 7 to control a substance

on which it has received a significant new use notice, section 5(g) requires the Agency to explain in the *Federal Register* its reasons for not taking action.

XIII. Modification of Reporting Requirements

The Agency believes that there may be circumstances that will lead to modification of the proposed new use descriptions. When a significant new use notice is submitted, EPA will review the use of determine whether any regulatory action is necessary. If after review, EPA allows the use to occur, the use arguably should not be subject to further reporting. EPA will consider amending the SNUR to modify or eliminate the new use description if the Agency decides that a change is warranted or that further notice of that use under a SNUR is not warranted. EPA may also amend the SNUR to modify or eliminate other use descriptions if it determines, based on any data available to EPA, that the substance no longer presents health or environmental concerns for those uses.

EPA will amend a SNUR through a rulemaking. When EPA revises a SNUR by eliminating notice requirements for a single, narrow use of the substance, the Agency may dispense with notice and comment if it for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. However, EPA will completely revoke or substantially alter a SNUR only after notice and an opportunity for comment.

XIV. Proposed Rule Language

This proposed rule is structured as follows. The chemical substance and significant new uses are described in paragraph (a) of this rule. In paragraph (b), EPA proposes definitions applicable for this section, most of which have been used in other TSCA rules. Paragraph (c) describes the procedures for determining whether a substance is subject to this proposal. Paragraph (d) describes the persons who must report. In this proposal, EPA also makes clear that the "principal importer" in an import transaction must be the party that submits the SNUR notice. An explanation of the principal importer concept is explained in EPA's final premanufacture notification regulations which were published in the *Federal Register* of May 13, 1983 (48 FR 21722). The notice requirements and procedures for reporting under this proposed rule are stated in paragraph (e).

Paragraph (f) clarifies which exemptions of TSCA section 5(h) apply in this SNUR. Testing Marketing

Exemptions (TMEs) under section 5(h)(4) generally apply to SNURs. In this case, however, the proposed significant new uses involve the actual manufacture and process operations as well as a "downstream" use. Therefore, the Agency believes that TMEs are not appropriate in this case.

Paragraph (g) describes enforcement provisions applicable to this rule. Paragraph (h) describes recordkeeping requirements.

EPA invites comments on all aspects of this proposed rule language.

XV. Enforcement

It is unlawful for any person to fail or refuse to comply with any provision of section 5 of TSCA or any rule promulgated under section 5. Manufacture or processing of a chemical substance for a significant new use, as defined by rule, without submission of a SNUR notice, would be a violation of section 15.

Section 15 of TSCA also makes it unlawful for any person to:

1. Use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of a SNUR.
2. Fail or refuse to permit entry or inspection as required by section 11 of TSCA.
3. Fail or refuse to permit access to or copying of records, as required by section 11 of TSCA.

Violators may be subject to various penalties and to both criminal and civil liability. The submission of misleading or false information in connection with the requirement of any provision of a SNUR would be considered a violation of the SNUR. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation. Each day of operation in violation could constitute a separate violation. Knowing or willful violations or a SNUR could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation and imprisonment for up to one year. Other remedies are available to EPA under section 7 and 17 of TSCA such as seeking an injunction to restrain violations of a SNUR and the seizure of chemical substances manufactured or processed in violation of a SNUR.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals

as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

XVI. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for P-83-394. The economic analysis of the possible outcomes as a result of the promulgation is summarized below. The Agency's complete analysis is available in the public record.

After promulgation of this SNUR the Agency believes there are five courses of action a company could take: (1) manufacture or process the substance with the protective equipment and worker notification procedures and therefore not trigger the SNUR, (2) file a SNUR notice with information showing other methods of controlling exposures that will mitigate EPA's concern for exposure to the substance, (3) file a SNUR notice for spray applications, (4) file a SNUR notice with the results of the recommended testing completed (or be prepared to respond to a section 5(e) order controlling use of the substance pending development of additional information), or (5) not manufacture or process the substance. The costs of these outcomes are summarized below.

Should a company decide to comply with the restrictions in this proposal, it would not incur the cost of filing a SNUR notification. The only costs to the company would be the costs of purchasing and using the personal protective equipment, determining the imperviousness of the gloves, recordkeeping costs, labeling and worker notification, and possibly the costs of notifying EPA of the company's intent to export the substance. The unit costs for gloves is estimated to be \$20.80; for face shields, \$15.95; and for replacement shields \$4.25. The net present costs over a 10-year period per worker for protective equipment would be approximately \$200. Testing the required gloves for imperviousness to P-83-394 would cost approximately \$350. Creating and maintaining records under the SNUR proposal for a 10-year period has been estimated to be \$1,940.00. Assuming 20 workers issued protective equipment, the net present value of compliance with the restrictions of this proposal would be \$4,027.40 for protective equipment, \$1,940 for recordkeeping, and \$350 for testing gloves for imperviousness.

A company that wishes to manufacture or process P-83-394 may decide to submit a SNUR notification with sufficient information showing that

it will employ other means to control exposures and mitigate EPA's concerns. Due to the large variety of potential means of controlling exposures, EPA cannot estimate their costs. Such persons would still incur the cost of filing a SNUR notification, estimated to range between \$1,375 and \$7,950. That person would probably suffer costs associated with the delay resulting from the review process. The length of delay has been estimated by EPA to be about four months, one month for the company to prepare and file notification and three months for the EPA review process. While the cost of this delay cannot be measured in specific figures, EPA does estimate that a 3.2 percent reduction in profits could occur because of this delay. Reporting to EPA under TSCA section 12(b) exporter requirements is estimated to cost between \$45 and \$90. Finally, after review of a SNUR notice which contains alternative means of controlling exposures to P-83-394, EPA could take further action under TSCA. Depending on the alternatives described in the SNUR notification, and their adequacy for controlling exposure to the substance, a section 5(e) order may be an appropriate Agency action. However, estimating the costs of such an order would be speculative at this time.

A company may wish to use the substance in spray applications and, therefore, would be required to submit a SNUR notification. Because EPA wishes to prevent inhalation of the substance, a company submitting notification for this use may incur costs associated with preventing inhalation, but these costs cannot be estimated at this time as they will be expected to vary with the specific exposure scenario reported in a given notice. The other costs of submitting notices for this application will be the same as those discussed above.

A company may wish to perform those tests recommended by EPA, or others, to demonstrate that the substance does not present the risks EPA believes it does. The costs of a two-year rat feeding study may range between \$700,000 and \$825,000. A two-generation reproductive study ranges between \$135,000 and \$165,000. Three-week patch tests in guinea pigs are estimated to cost \$6,400. Primary dermal irritation studies are predicted to cost between \$450 and \$1,400. Subacute toxicity testing (90-day feeding studies) generally cost between \$85,000 and \$110,000. The total cost of this battery of tests is estimated to be between \$928,850 and \$1,107,000. The costs of filing a SNUR and the costs of delay, as described above, would also be incurred.

Finally, some companies may find the cost of controlling exposure to the substance to be too expensive to justify manufacturing or processing P-83-394. There may be some lost profits and lost benefits to society as a result of this outcome. EPA's costs of promulgating and enforcing the SNUR and the benefits of reduced health risks would continue.

Promulgation of this SNUR will result in reduced health risks by minimizing exposure to P-83-394. The Agency anticipates that companies wishing to manufacture or process the substance will either comply with the controls identified in the proposed rule or file SNUR notices which indicate other methods of controlling exposures to the substance. Given the relative cost of the recommended testing versus the protective equipment, EPA does not believe that it is likely that testing will be performed. However, the costs of the equipment and recordkeeping requirements are low and probably will not cause companies to decide not to manufacture or process P-83-394. The fact that the PMN submitter intends to comply with the protective equipment and recordkeeping requirements indicates that some uses of the substance would return an acceptable profit.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "Major Rule" because it does not have an effect on the economy of \$100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget

(OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this proposed rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

C. Paperwork Reduction Act

The information reporting requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070-0012.

XVIII. Confidential Business Information

Any person who submits comments which the person claims as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XIX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50510). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. The PMN for this substance.
2. The Federal Register notice of receipt of the PMN.
3. A copy of the section 5(e) Consent Order.
4. The Economic Analysis of this proposed rule.
5. The proposed SNUR for this substance.

A public version of this record from which CBI is deleted is available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays in the OTS Public Information Office, Rm. E-107, 401 M Street SW., Washington, D.C.

EPA will identify the complete rulemaking record by the date of promulgation. The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

(Sec. 5, Pub. L. 94-469, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 21, 1983.

William D. Ruckelshaus,
Administrator.

PART 721—[AMENDED]

Therefore, it is proposed that proposed Part 721 of Chapter I of Title 40 be amended by adding § 721.40 to read as follows:

§ 721.40 Substituted polyglycidyl benzeneamine.

This section identifies activities with respect to a certain chemical substance which EPA has determined are "significant new uses" under the authority of section 5(a)(2) of the Toxic Substances Control Act. In addition, it specifies procedures for reporting on that chemical substance.

(a) *Chemical substance and new uses subject to reporting.* (1) The chemical substance known generically as

substituted polyglycidyl benzeneamine (P-83-394) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses subject to reporting are:

(i) Use of substituted polyglycidyl benzeneamine (P-83-394) or formulations containing the substance in spray applications.

(ii) Manufacture, processing, or distribution in commerce without establishing a program whereby:

(A) During all stages of manufacture and processing of the substance, and during response to emergencies and spills involving P-83-394, any person who may potentially be dermally exposed to the substance must wear:

(7) Gloves which cover the arm up to the elbow and which have been determined to be impervious to P-83-394 under conditions of exposure (gloves may be determined to be impervious by standard testing methods or by reliance on the glove supplier's specifications for those gloves selected);

(2) A face shield of at least 8 inches in length; and

(3) Clothing which covers any other exposed areas of the arms, legs, and torso.

(B) All workers described in paragraph (a)(2)(ii)(A) of this section are informed in writing, or by presenting the information as part of a training program in a safety meeting where attendance is recorded, of the following: to avoid all contact with this substance; that structurally similar chemicals have been found to cause cancer, reproductive effects, and kidney and liver effects in laboratory animals; that this chemical has caused allergic reactions in humans; that this substance is a severe skin and eye irritant; and that the use of impervious gloves, face shields, and other clothing to cover exposed areas of the arms, the legs, and the torso is required.

(C) A label is affixed to each container of P-83-394 or of a formulation containing P-83-394 which (in a print size no smaller than ten point type) contains, at a minimum, the following information:

WARNING! CONTACT WITH SKIN AND EYES IS HARMFUL

- Severe skin and eye irritant.
- Similar chemicals cause cancer, reproductive effects, and kidney and liver changes in laboratory animals. They have also caused allergic reactions in humans.
- Prevent all contact with skin, eyes and clothing.
- Wear impervious gloves, face shield, and protective clothing. Promptly remove and wash contaminated non-impervious clothing before re-use.
- Wash thoroughly after handling and before eating, drinking or smoking.

STORAGE INSTRUCTIONS:

- Keep closure tight and upright to prevent leakage.
- Keep container closed during shipment and when not in use.
- In case of spillage absorb with sand or vermiculite and flush with plenty of water.

FIRST AID:

- In case of eye contact, immediately flush with plenty of water and get immediate medical attention.
- In case of skin contact, immediately wash with soap and water and get immediate medical attention.

(b) *Definitions.* The applicable definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section. Applicable definitions in § 720.3 of this chapter apply to this section. In addition, the following definitions apply:

(1) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(2) "Spray application" means any method of projecting a jet of vapor or finely divided liquid onto a surface to be coated; whether by compressed air, hydraulic pressure, electrostatic forces, or other methods of generating a spray.

(c) *Determining whether a chemical substance is subject to this section.* (1)

A person who intends to manufacture, import, or process a chemical substance which is described by the generic name in paragraph (a)(1) of this section may ask EPA whether the substance is subject to this section. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture, import, or process the chemical substance for commercial purposes.

(2) To establish a *bona fide* intent to manufacture, import, or process a chemical substance, the person who proposes to manufacture, import, or process the chemical substance must submit to EPA:

(i) The specific chemical identity of the chemical substance that the person intends to manufacture, import, or process.

(ii) A signed statement that the person intends to manufacture, import, or process that chemical substance for commercial purposes.

(iii) A description of the research and development activities conducted to

date, and the purpose for which the person will manufacture, import, or process the chemical substance.

(iv) An elemental analysis.

(v) Either an X-ray diffraction pattern (for inorganic substances), a mass spectrum (for most other substances), or an infrared spectrum of the particular chemical substance, or if such data do not resolve uncertainties with respect to the identity of the chemical substance, additional or alternative spectra or other data to identify the substance.

(3) If an importer or processor cannot provide all the information required in paragraph (c)(2) of this section because it is claimed as confidential business information by the importer's or processor's manufacturer or supplier, the manufacturer or supplier may supply the information directly to EPA.

(4) EPA will review the information submitted by the proposed manufacturer, importer, or processor under this paragraph to determine whether it has a *bona fide* intent to manufacture, import, or process the chemical substance. If necessary, EPA will compare this information either to the information requested for the confidential chemical substance under § 710.7(e)(2)(v) of this chapter or the information requested under § 720.85(b)(3)(iii) of this chapter.

(5) If the proposed manufacturer, importer, or process has shown a *bona fide* intent to manufacture, import, or process the substance and has provided sufficient unambiguous chemical identity information so EPA can make a conclusive determination as to the identity of the substance, EPA will inform the proposed manufacturer, importer, or processor whether the chemical substance is subject to this section.

(6) A disclosure to a person with a *bona fide* intent to manufacture, import, or process a particular chemical substance that the substance is subject to this section will not be considered public disclosure of confidential business information under section 14 of the Act.

(7) EPA will answer an inquiry on whether a particular chemical substance is subject to this section within 30 days after receipt of a complete submission under paragraph (c)(2) of this section.

(d) *Persons who must report.* Any person who intends to manufacture, import (other than as part of an article), or process the substance identified in paragraph (a) of this section for the significant new use defined in that paragraph must submit a notice to the EPA Office of Toxic Substances in Washington, D.C. under the provisions

of section 5(a)(1)(B) of the Act, Part 720 of this chapter, and this section. Any notice of import must be submitted by the principal importer.

(e) *Notice requirements and procedures.* Each person who is required to submit a significant new use notice under this section must submit the notice at least 90 calendar days before commencing a significant new use. The submitter must comply with any applicable requirement of section 5(b) of the Act, and the notice must include the information and test data specified in section 5(d)(1). The notice must be submitted on the notice form in Appendix A to Part 720 of this chapter and must comply with the requirements of Part 720 of this chapter except to the extent that they are inconsistent with this section. EPA will process the notice in accordance with the procedures in Part 720 of this chapter except to the extent they are inconsistent with this section.

(f) *Exemptions and exclusions.* The chemical substance identified in paragraph (a) of this section is not subject to the notification requirements of this section if the substance:

(1) Is manufactured or processed only in small quantities solely for research and development and if the substance is

manufactured or processed in accordance with § 720.36 of this chapter.

(2) Is manufactured or processed only as an impurity or byproduct.

(3) Is part of an article.

(g) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit access to or copying of records, as required by section 11 is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection, as required by section 11, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. The submission of false or misleading information in connection with the requirement of any provision of this section may subject persons to penalties calculated as if they never filed a notice.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

(h) *Recordkeeping.* Manufacturers and processors of the substance identified in paragraph (a) of this section must maintain the following records for five years from their creation:

(1) The names of persons required to wear protective equipment in accordance with paragraph (a) of this section, the date(s) on which they were informed, and the means by which they were informed.

(2) The names and addresses of any person to whom the substance is sold or transferred and the date(s) of any such sale or transfer.

(3) The method used for determining that the gloves prescribed by paragraph (a) of this section are impervious to P-83-394, the date(s) such determination was made, and the results of that determination.

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federal register

Thursday
December 29, 1983

Part IV

Environmental Protection Agency

**Aryl Phosphates; Response to the
Interagency Testing Committee; Proposed
Rule**

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 799
[OPTS-42038; BH-FRL 2458-1]
**Aryl Phosphates; Response to the
Interagency Testing Committee**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Advance Notice of Proposed
Rulemaking.

SUMMARY: In the Second Report of the Interagency Testing Committee (ITC), transmitted to the Administrator of the EPA on April 10, 1978, the ITC designated the aryl phosphate category for testing consideration. The manufacturers of aryl phosphates are currently conducting a testing program that EPA believes will provide adequate data in some of the areas where the Agency believes testing is needed. For the remaining data gaps, the Agency is publishing this Advance Notice of Proposed Rulemaking (ANPR), which initiates rulemaking to require the testing which appears necessary to complete a preliminary assessment of the health and environmental effects of the aryl phosphates. This notice constitutes EPA's response to the ITC's designation of the aryl phosphates for testing consideration. EPA seeks comment on its conclusions as to the need for further testing of the aryl phosphates and the submission of data, information and views on a number of issues listed in Unit IV under the Supplementary Information heading of this Notice.

DATE: All comments should be submitted on or before February 27, 1984.

ADDRESS: Written comments should bear the document control number OPTS-42038 and should be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

The administrative record supporting this action is available for public inspection in Rm. E-107 at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:
I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) [Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*] authorizes the EPA to promulgate regulations requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemicals may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to the EPA a list of chemicals to be considered for the promulgation of testing rules under section 4(a) of the Act.

On April 10, 1978, the ITC placed on its priority testing list a category of chemicals known as aryl phosphates (see 43 FR 16684, April 19, 1978). The ITC defined "aryl phosphates" as phosphate esters of phenol or of alkyl-substituted phenols. Tri-aryl and mixed alkyl-aryl esters are included, but tri-alkyl esters are excluded. The ITC recommended that the aryl phosphates

(A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight of evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the section 4(a)(1)(B)(i) finding, EPA considers only production, exposure, and release information to determine if there is substantial production, significant or substantial exposure, and substantial release. Thus, while EPA can require testing for an effect under section 4(a)(1)(A) only if there is a suspicion of a hazard, under section 4(a)(1)(B) EPA can require testing whether or not there are data suggesting adverse effects if the relevant

production, exposure, and release criteria are met.

be considered for testing for the following health effects: carcinogenicity, mutagenicity, teratogenicity and chronic effects (with special emphasis on neurotoxicity). In addition, the ITC also recommended that an epidemiology study be considered because of the large-scale production and potential for substantial occupational exposure to certain aryl phosphates. The ITC also recommended that the aryl phosphates be considered for environmental effects testing and expressed specific concern about the potential for aryl phosphates to persist in the aquatic environment, to bioaccumulate in aquatic species, and the potential effects of aryl phosphates on aquatic and terrestrial systems. This Advance Notice of Proposed Rulemaking provides EPA's response to the ITC's designation of the aryl phosphates as required by TSCA section 4(e).

Under section 4(a)(1) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

production, exposure, and release criteria are met.

For the findings under both section 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings can be made is described

in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) finding is discussed in 45 FR 48528, and the section 4(a)(1)(B) finding is discussed in 46 FR 30300.

In evaluating the ITC's testing recommendations concerning aryl phosphates, EPA considered all available relevant information including the following: information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of aryl phosphates under the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712); and published and unpublished data available to the Agency, including information submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716).

The nine aryl phosphates listed below have been specifically identified by industry as being constituents of commercial products currently in production.

1. TCP—Tricresyl phosphate, mixed isomers (tritolyl phosphate, CAS No. 1330-78-5).
2. TXP—Trixylenyl phosphate, mixed isomers (trixyl phosphate, CAS No. 25155-23-1).
3. TPP—Triphenyl phosphate (CAS No. 115-86-6).
4. NPDP—Nonylphenyl diphenyl phosphate, mixed isomers (CAS No. 64532-97-4).
5. DBDP—Dimethylbenzylphenyl diphenyl phosphate, mixed isomers (also known as cumylphenyl diphenyl phosphate, CAS No. 34364-42-6).
6. IPDP—Isopropylphenyl diphenyl phosphate, mixed isomers (CAS No. 28109-99-8).
7. BPDP—Butylphenyl diphenyl phosphate, mixed isomers (CAS No. 34364-42-6).
8. IDPP—Isodecyl diphenyl phosphate (CAS No. 59800-46-3).
9. EHDP—2-Ethylhexyl diphenyl phosphate (CAS No. 1241-94-7).

II. Tentative EPA Decision and Issues

A. Development of Rulemaking

The Agency has reviewed available data which indicate that human exposure to aryl phosphates as a category may be substantial; however, the ambiguous nature of the information available regarding changes in the production, use and subsequent human exposure to aryl phosphates, and the lack of reliable environmental monitoring data have prompted EPA to issue an Advance Notice of Proposed Rulemaking (ANPR) for the aryl phosphates, rather than issue a proposed test rule.

Should data be submitted which indicate that exposure levels are biologically insignificant or that the number of people exposed to the aryl phosphates is low, the Agency will reconsider its decision to proceed with this rulemaking action. EPA will, in the intervening period between publication of this ANPR and issuance of a proposed section 4(a) rule, attempt to refine the exposure data and reconsider its decisions in light of any additional data that become available.

EPA, in publishing this ANPR, wishes to receive comment on its tentative basis for requiring testing, and on the tests the Agency believes necessary to

characterize the health and environmental effects of the aryl phosphates. The bases for the suggested findings, and for the tests under consideration, are discussed below.

B. Preliminary Findings

1. *Potential human exposure.* The Agency considers that publicly available information indicates that the nine aryl phosphates listed above may meet the criteria for a finding under section 4(a)(1)(B)(i): that the chemicals are produced in substantial quantities and that there is or may be substantial human exposure (see Table 1).

TABLE 1

Chemical	1977 production (mil. lb.) ¹	1980 projected production (mil. lb.) ²	Used as plasticizer	Used as hydraulic fluid/lubricant additive	Number of persons exposed in the workplace
TCP	23	(?)	X	X	187,709
TXP	15	(?)	X	X	3,105
TPP	16	10	X		7,631
NPDP/OBSP*	13	15-20	X	X	2,893
IPDP	28	30-40	X		503
BPDP	3	15-20	X	X	531
IDPP	10	15	X	X	N.A.
EHDP	3	4.8	X	X	* 11,432
Total	111	100-140			

¹ Refs. 42 and 50.

² Ref. 46.

³ Confidential industry estimates show a substantial drop in production since 1977.

⁴ Reported jointly by industry.

⁵ Subject to regulation by FDA under 40 CFR Part 175.300, 360, 390, 176.170 and 177.1210

Most human exposure to aryl phosphates occurs in the workplace. The ITC cited the 1972-74 National Occupational Hazard Survey (NOHS), published in 1977 by the National Institute for Occupational Safety and Health (NIOSH) (Ref. 63), as one of their reasons for recommending testing of the aryl phosphates.

Aryl phosphates are used primarily as fire retardant plasticizers (36.5 million pounds in 1977), and as hydraulic fluids and lubricant additives (41.8 million pounds in 1977) (Ref. 42). Human exposure to aryl phosphates occurs primarily during polyvinyl chloride (PVC) processing and hydraulic fluid use.

About 90 percent of the 36.5 million pounds of aryl phosphates used as flame retardant plasticizers are used in the processing of polyvinyl chloride (Ref. 52). The remaining ten percent is used in various other plastics. No major difference in exposure profile would be expected due to the particular type of polymer in which the aryl phosphates are used. Certain procedures used to manufacture PVC products, such as calendaring, roll coating, film casting, and dip molding, may afford opportunities for exposure to plasticizer mists containing aryl phosphates (Ref. 42).

Fire resistant hydraulic fluids (excluding brake fluids) based on phosphate esters are used primarily in applications where high temperature

could pose a fire hazard if the hydraulic system developed leakage. The steel and automotive industries account for 65-70 percent of aryl phosphate hydraulic fluid uses (Ref. 42). Leakage of fire resistant hydraulic fluids containing phosphate esters may expose workers in the basic metals industries, the automotive industry, die casting operations and steel foundries, and military applications (Ref. 55). Evidence that such leakage is not infrequent is provided by estimates that as much as 80 percent of the annual use of phosphate esters in hydraulic fluids may be for replacement of losses (26.8 million pounds in 1977) (Ref. 55).

NIOSH estimated in the 1972-74 National Occupational Hazard Survey (NOHS) that up to two million workers may be exposed to aryl phosphates (Ref. 63). However, in the NOHS survey for the aryl phosphates, NIOSH made a "generic" estimate based on observations of products in general use in the workplace which the surveyor speculated might contain aryl phosphates. EPA believes that, in this instance, this "generic" NIOSH methodology may have overestimated actual aryl phosphate exposure by at least a factor of ten (Ref. 60). EPA believes that more recent NIOSH estimates, based on actual observed use of aryl phosphates and the presence in the workplace of tradename products known to contain aryl phosphates, are

more reliable, and has based its evaluation on those figures (Ref. 46). The actual and tradename results of the survey indicate substantial human exposure to some aryl phosphates. However, it is not clear that the actual and tradename survey results provide an accurate picture of human exposure due to changes in the market condition for aryl phosphates over the last 5 years (Table 1).

For instance, the production and use of TCP reportedly has declined dramatically since the 1972-74 NOHS was performed (Ref. 54). This decline has occurred as a result of the greater availability and economy of synthetic feedstocks and the intentional phase-out of TCP from certain uses due to the neurotoxicity of its ortho isomer (TOCP).

Manufacturers of TCP cite this decline as evidence that exposure to TCP has also declined dramatically. If exposure has decreased as much as production, it would be more than an order of magnitude lower than indicated by the 1972 NOHS and may not be considered substantial by EPA. However, manufacturers of TCP admit that their knowledge of some of the downstream uses of TCP is very limited and that it is possible that small amounts (several percent) of TCP could be added to various specialty lubricants or other similar products to which a substantial number of persons might be exposed (Ref. 54). The manufacturers believe that the health significance of such exposures would be minimal, but have been unable to date to fully support this contention. A new NIOSH survey is currently being conducted; however, results will not be available until at least 1984. The replacement of TCP by synthetic feedstock-derived aryl phosphates also raises the concern that the 1972-74 NIOSH survey may underestimate exposure to IPDP, NPDP, DBDP, IDPP, BPDP, and EHDP. If current exposure estimates for these six aryl phosphates indicate substantial TSCA-covered exposure, EPA would expect to make substantial exposure findings under section 4(a)(1)(B)(i) of TSCA for each of these aryl phosphates. (Exposure due to uses regulated under the Federal Food, Drug and Cosmetic Act are not covered by TSCA).

With the possible exception of TCP, significant direct consumer exposure is unlikely because other aryl phosphates do not appear to be in consumer products except as plasticizers. Because of the tendency of the aryl phosphates to remain bound within the polymer matrix, they are not expected to leach or volatilize from plastics in which they are contained in sufficient quantities to cause concern due to this mode of exposure (Ref. 42). The NOHS lists a number of products which contained TCP which might be expected to have

consumer as well as industrial uses (Ref. 46).

As discussed under Unit B.3. of this Notice, Environmental Release, aryl phosphates are quite insoluble in water and would be expected to adsorb strongly to sediments (Ref. 41). Thus, any aryl phosphates released to the aquatic environment would be expected to partition to sediments and would not likely result in direct human exposure, such as in finished drinking water. However, the potential does exist for indirect human exposure as a result of aryl phosphates accumulating in sediment-bound organisms or organisms which filter-feed sediment and interstitial waters, which in turn may be consumed by humans as food (shrimps, clams, mussels, snails, etc.). The Agency has not seen any data which would suggest that significant exposure to aryl phosphates occurs via foods or drinking water, however.

2. Adequacy of information and need for health effects testing. EPA has approached its analysis of human health concerns for the aryl phosphates from the standpoint of both potential unreasonable risk [section 4(a)(1)(A)] and substantial production and exposure [section 4(a)(1)(B)]. (See Table 2). The specific justifications for each approach are discussed below.

TABLE 2.—SUMMARY OF TENTATIVE HEALTH EFFECTS TESTING REQUIREMENTS

Effect	Under a 4(a)(1)(A) finding ¹	Under a 4(a)(1)(B) finding ²
Chronic/subchronic	No.	All ³
Mutagenicity	IPDP ⁴	All ^{3,4}
Oncogenicity	No.	Triggered ⁵
Teratogenicity	TCP	All except NPDP, DBDP, TPP.
Reproductive	TCP	All ³
Neurotoxicity	IPDP, TXP, TCP	IPDP, TXP, TCP.
Epidemiology	No ⁷	No. ⁷

¹ "May present an unreasonable risk" finding.

² Substantial production and substantial or significant human exposure finding.

³ All aryl phosphates meeting substantial production and exposure criteria.

⁴ Ongoing industry testing meets testing needs of IPDP for gene mutations. If results are positive, EPA will propose higher tiered testing of IPDP to permit assessment of mutagenic risk. If substantial production and exposure criteria are met for IPDP, EPA will propose chromosomal aberrations testing of IPDP.

⁵ Testing requirement dependent upon results of mutagenicity and subchronic testing.

⁶ Ongoing industry testing meets testing needs of IPDP for neurotoxicity.

⁷ EPA does not believe a suitable study population can be identified at this time.

a. Chronic toxicity. Several subacute and subchronic studies have been conducted on various aryl phosphates, including TCP, TPP, DBDP, NPDP, and TXP (Refs. 17, 23, 44, 45, 47 and 51), but these are primarily oral neurotoxicity studies in the hen of 28 days or less duration, and are not adequate to assess the organ-specific subchronic effects in mammals for these aryl phosphates. Concentrations reported to produce effects in the liver, kidneys, and adrenals of rats resulting from inhalation for up to 90 days ranged from 450 ppm to 50,000 ppm with typical lowest effect levels reported at about

1,000 ppm (Ref. 47, 51). Although these results are consistent with the low acute toxicity of these compounds (Refs. 10, 23, and 49), the Agency believes that organ-specific studies of 90-day duration (or longer) in at least one mammalian species are needed to adequately assess the subchronic effect of any aryl phosphate to which there is substantial human exposure, and would propose subchronic testing under section 4(a)(1)(B) for all such aryl phosphates. However, the data available to the Agency up to this time do not support testing under section 4(a)(1)(A) (potential unreasonable risk).

b. Mutagenicity. All of the nine commercial aryl phosphates have received some mutagenicity testing using the Ames assay (Refs. 18-22, 30 and 49). Negative results were obtained for all of the aryl phosphates tested with the exception of IPDP. These assays are inadequate to completely characterize the mutagenic potential of the aryl phosphates, however, because the Ames test is not generally recognized as a stopping point in the tier testing of large exposure chemicals. Therefore, EPA is considering requiring that TCP, TXP, TPP, NPDP, DBDP, BPDP, IDPP, and EHDP be tested under TSCA section 4(a)(1)(B) for specific-locus gene mutation in cells in culture, for DNA damage as evidenced by either unscheduled DNA synthesis or sister chromatid exchange (SCE) formation, and for their ability to induce chromosomal aberrations in cells in culture. However, with the exception of IPDP, the data available to the Agency do not support testing under section 4(a)(1)(A) at this time.

Test results on IPDP were negative in the Ames test and negative without activation in the mouse mammalian cell gene mutation test using lymphoma cells (Ref. 49). However, IPDP results were equivocal with activation in the mouse lymphoma test. As a result, EPA believes an additional confirmatory gene mutation test is necessary for IPDP. Industry is conducting such a test which was initiated in April 1983 (Ref. 62). For this reason, EPA is not initiating section 4(a) rulemaking to require gene-mutation testing of IPDP at this time. Should the industry testing of IPDP or other data reveal a need for further mutagenicity testing of IPDP (including chromosomal aberration) which industry is unwilling to perform, EPA will reconsider the need for a section 4(a) test rule for mutagenicity for this substance. The protocol and design for the mutagenicity testing being conducted by industry are discussed in Unit III of this notice. If a substantial exposure finding is made for IPDP under section 4(a)(1)(B), the Agency would expect to propose chromosomal aberration testing.

c. Oncogenicity. EPA believes that human exposure to the aryl phosphates

may be substantial under section 4(a)(1)(B) by currently available information, but has not seen any data which would indicate that they may present an oncogenic risk under section 4(a)(1)(A). Therefore, for purposes of determining testing needs under TSCA section 4, the Agency believes that the mutagenicity testing outlined above, together with the organ-specific subchronic testing to be required for all aryl phosphates meeting substantial production and exposure criteria, provides a reasonable screening program to determine which, if any, of the aryl phosphates should be subjected to lifetime oncogenicity bioassays in laboratory animals. In accordance with that assessment, such testing would be required only if the results of the mutagenicity testing are positive or if the toxicity shown in the organ-specific subchronic testing indicates a likelihood of oncogenicity. However, EPA will continue to review this preliminary decision, and requests public comment on the issue of utilizing mutagenicity testing as a screen for identifying candidates for oncogenicity testing. (See Unit IV.). The Agency's rationale for planning to require a test system which would trigger oncogenicity testing from a mutagenicity test battery is based on a long history of scientific investigation as to the correlation between mutagenicity and carcinogenicity (Ref. 71).

Prior to the late 1960's and early 1970's, it was generally felt that there was little or no correlation between mutagenicity and carcinogenicity. Few mutagens had been shown to be potent carcinogens, and carcinogens which had been tested for mutagenicity, primarily in microbial assays which lacked the capacity for metabolic activation, has been designated "nonmutagenic." As basic understanding of the metabolism of carcinogenic chemicals increased, it was discovered that many carcinogens undergo metabolic activation to an ultimate carcinogenic moiety by mammalian enzyme systems. This discovery was followed by the development of an *in vivo* system, the host-mediated assay, to test for potential mutagenicity (Ref. 72); and *in vitro* testing of reactive forms of carcinogenic chemicals (Refs. 73-76) which resulted in a demonstration of the mutagenicity of many known carcinogens.

Whatever the mechanistic basis for the correlation between mutagenicity and carcinogenicity, there does appear to be an empirical correlation which is worth exploiting in the identification of potential carcinogens. The Agency currently believes that the correlations

indicated by these data are sufficiently sound such that the carcinogenic potential of a chemical may reasonably be predicted from the results of a mutagenicity testing scheme for the purposes of setting priorities for conducting oncogenicity bioassays under section 4 of TSCA. The Agency requests public comment on this issue.

d. *Teratogenicity.* Some data are available relating to the teratogenic potential of triorthocresyl phosphate (TOCP), NPDP, DBDP, and TPP (Refs. 7, 44, 57, 58, 59). With the exception of TOCP, the results are sufficient to reasonably predict that these aryl phosphates do not act as potential teratogens. EPA therefore is not proposing to require teratogenicity testing on NPDP, DBDP and TPP.

The only available teratogenicity study on TCP (Ref. 59) does not adequately characterize the teratogenic potential of TCP because the protocol design is invalid and only the ortho isomer (TOCP) was tested. This study was intended as a preliminary study to examine the potential effects of prenatal exposure to TOCP on postnatal behavior. Therefore, TOCP was administered (at 500 and 750 mg/kg/day) by gavage late in gestation (day 18 and 19) during the fetal period. The investigators reported that significant increases in abnormalities were not observed. This is not surprising, however, because the most susceptible period to inducing gross structural abnormalities is during the period of major organogenesis (day 15-16 in the rat), and not the fetal period (Ref. 68). The Agency does not believe that the study provides reliable data upon which to evaluate the teratogenic potential of TCP.

Concern for the possible teratogenicity of TCP is supported by the suggestion that TOCP may interfere with vitamin E metabolism (see Unit II.B.2.e., Reproductive Effects, below); vitamin E deficiency during gestation produces severe and often lethal syndromes of congenital malformations in laboratory animals (Ref. 7). Thus, the Agency intends to require teratogenicity testing of TCP under section 4(a)(1)(A) of TSCA. Because the Agency lacks data on the teratogenicity of TXP, IPDP, BPDP, IDPP, and EHDP, it is considering proposing teratogenicity testing for these compounds under section 4(a)(1)(B) if there is substantial exposure to these compounds.

e. *Reproductive effects.* The reproductive effects of the aryl phosphates have not been adequately characterized. Therefore, the Agency is considering proposing reproductive

effects testing under section 4(a)(1)(B) for all aryl phosphates for which there is substantial production and exposure. The only data available are for tricresyl phosphate (TCP) and are from a Russian study on the comparative gonadotropic effects of tricresol, phosphorous oxychloride, and tricresyl phosphate, and from a general toxicology study in which a species comparison was conducted.

The data from the Russian study (Ref. 69) indicated that inhalation exposure of rats to the MAC (maximum allowable concentration) of tricresyl phosphate did not cause any changes in the ovarian and estrus cycles. The actual concentration to which the animals were exposed was not included in the report.

In the general toxicology study conducted by Carpenter (Ref. 6), some degree of degeneration of seminiferous tubules was reported in three of four testes examined from twelve dogs which had been exposed to 20 subcutaneous injections over a 4 to 5-week period of a mixture of phosphate esters of cresols, xylenols, and other alkyl phenols (TCP). The dose levels at which these effects were observed were not explicitly stated, but the doses administered to a total of 12 dogs ranged from 100 to 500 mg/kg/dose. The study also reported that several rabbits which had been exposed to the same mixture by gavage exhibited changes suggestive of early testicular degeneration, but these changes were not definitive enough to be conclusive. The dose levels at which these effects were observed were not clearly indicated, but the doses administered to the six animals ranged from 120 to 480 mg/kg/day for 2 to 14 days or a total dose of 0.72 to 2.88 g/kg.

Because many of the toxicities observed following exposure to TCP were similar to those reported resulting from vitamin E deficiency, and because the structure of TCP appears to be similar to features of tocopherols possessing vitamin E activity, Carpenter suggested the possibility that interference with vitamin E metabolism may be responsible for toxic effects observed following exposure to TCP (Ref. 6).

In summary, these studies are inadequate to assess the reproductive effects of tricresyl phosphate. Some of the reasons are as follows: (1) The actual doses administered or at which adverse testicular effects were observed were not clearly indicated; (2) the number of animals on test were either too few or not reported; (3) the duration of exposure was either not reported or too short; (4) the dosing of dogs which showed evidence of testicular degeneration was performed by

subcutaneous injection, which is not representative of potential human exposure to TCP; and (5) neither study examined the effects on male and female reproductive performance, such as mating behavior, conception, parturition, lactation, weaning, and on the growth and development of offspring.

If TCP or TOCP, indeed, are vitamin E antagonists, their potential for inducing adverse reproductive effects should be of concern. Vitamin E is important in the maintenance of normal testicular function and is critical in the normal development of offspring. Interference with vitamin E metabolism may result in serious adverse reproductive effects (Ref. 7). Therefore, the Agency is considering proposing under section 4(a)(1)(A) that a 2-generation reproductive study be conducted on TCP.

Although the Agency believes that evidence of reproductive toxicity on one category member raises some suspicion of this hazard from the others, under 4(a)(1)(A) EPA would propose reproductive effects testing only on TCP at this time because of the weaknesses of the reproductive effects studies of TCP described above. If the results of the study on TCP are positive, EPA then proposes to trigger full reproductive effects testing under section 4(a)(1)(A) for all other category members.

f. Neurotoxicity. All nine aryl phosphates have been tested for acute toxicity by both oral and dermal routes (Refs. 1, 4, 6, 25-28, 31-34, 47, and 49) and the acute neurotoxicity of certain aryl phosphates (TCP, TXP, IPDP) is well documented (Refs. 33-37). With the exception of subchronic neurotoxicity of IPDP, TXP and TCP, all aryl phosphates have been adequately characterized with respect to neurotoxic potential (Refs. 2-4, 8-17, 24-28). In the case of IPDP, the Agency has concluded that acute testing was adequate to determine that the para and meta isomers are not potentially neurotoxic, and that ortho isomer is neurotoxic (Refs. 3, 8-11, 16, 23-27, 36-38). FMC corporation has agreed to perform a 90-day subchronic neurotoxicity study of commercial IPDP as discussed in Unit III of this notice. The results of this study will be sufficient to reasonably predict or determine the neurotoxicity of IPDP.

The 2,3- and 2,4- isomers of TXP have been shown to be neurotoxic, as well as the 2,4-2,4-3,5- and the 2,6-3,5-3,5- isomers (Refs. 33-37). EPA considers the existing studies on TXP inadequate to assess the chronic neurotoxicity of TXP because of the small numbers of animals tested, the limited duration of exposure, and the low levels of exposure to which

the test animals were subjected. Because of the indications of neurotoxic potential and lack of adequate data, EPA expects to propose subchronic neurotoxicity testing of a commercial mixture of the isomers of TXP under TSCA section 4(a)(1)(A).

The Agency has concluded that, although data on the acute neurotoxicity of TCP are adequate, available data on the chemical's subchronic neurotoxicity are not. Some data do exist, but the studies reviewed by the Agency are studies on the hen of 28-day duration (Refs. 17, 28), which are not sufficient to adequately assess the effects of TCP over time for a subchronic neurotoxic effect. Industry's 90-day subchronic neurotoxicity study in the hen on isopropylphenyl diphenylphosphate (IPDP) (see Unit III. 2.) will use triorthocresyl phosphate (TOCP) as the positive control. The neurotoxic activity of TCP has been conclusively linked to its ortho isomer, TOCP (Ref. 33). Therefore, characterizing the subchronic neurotoxicity of TOCP should allow EPA to reasonably predict the subchronic neurotoxicity of TCP whose TOCP content is known. However, the use of TOCP as a positive control in the ongoing IPDP study will involve only one dose level; this will not permit the determination of a dose-response curve. Therefore, EPA expects to propose under TSCA section 4(a)(1)(A) a 90-day subchronic neurotoxicity study using three dose levels of TOCP. Analytical data on each manufacturer's commercial TCP product will allow the Agency to assess the potential toxicity of the commercial TCP product relative to the content of TOCP within that product. In addition, because the available data are inadequate for assessing the neurotoxicity of TXP and TCP, the Agency is considering proposing such testing under TSCA section 4(a)(1)(B) for these two aryl phosphates if the substantial production and exposure findings are met.

g. Epidemiology. EPA believes that an epidemiological study of workers exposed to aryl phosphates could potentially provide reliable data for evaluating the potential risk of neurologic harm from such exposure. EPA attempted to define a suitable study population through extensive contractor efforts. Excessive problems in terms of valid cohort identification were presented, however. The number of workers involved in manufacturing is too small to permit a valid study for the observation of neurotoxic effects, and the number of processors is so large as to present severe logistical problems. Further attempts to define a cohort were not recommended by the contractor

(Ref. 53). Because of the difficulty in identifying a suitable study population, EPA has concluded that an epidemiological study is not feasible at this time and will not propose that an epidemiological study be undertaken.

3. Environmental release. In 1977 an estimated 26.8 million pounds of aryl phosphates in hydraulic fluids were used to replace losses due to leakage from pumps, primarily in the heavy metal and automotive industries (Ref. 42). The fate of such leakage may be aqueous discharge, landfill, and/or reclamation. Typically, each hydraulic machine has a catch basin or other device to catch and retain any leaks from the machine. These "catchings" are collected in a sump where the "oil" is separated from the water. The "oil" is collected for disposal or for reclamation. The water is usually filtered and sent to the sewer. This water is sometimes pretreated on the site before it is sent to publicly-owned treatment works. Due to the hydraulic fluids' usage patterns and certain monitoring data, EPA believes that there may be substantial entry of the aryl phosphates into the environment without treatment. (Refs. 39, 41, 48). Because industries that use hydraulic fluid containing aryl phosphates are situated near both saltwater and freshwater environments, EPA believes that release to both environments is possible. The manufacturers of the aryl phosphates question this conclusion. They state that it is unrealistic to assume that substantial amounts of hydraulic fluid enter natural aquatic systems without treatment. In support of their position, the aryl phosphates manufacturers submitted a monitoring study conducted by Monsanto which reported that there was a negligible or nonexistent release of aryl phosphates to the environment (Ref. 45). After careful review by EPA scientists, the Agency suggested that industry develop a new and more comprehensive monitoring and sampling protocol for the aryl phosphates. EPA did not believe that the original data submitted were adequate to support industry's position of little or no environmental release. In the Agency's view, the study submitted contained too few sampling sites, was conducted in a number of locations where the Agency considered detection of aryl phosphates unlikely, and did not provide a level of detection sensitive enough to adequately characterize the presence and extent of aryl phosphate contamination (Ref. 29).

To resolve the uncertainty regarding the amount of aryl phosphates released to the environment and the levels of aryl

phosphates in sediment and surface water, the Aryl Phosphate Industry Ad Hoc Committee agreed to conduct a monitoring study and submitted a monitoring protocol to EPA (Ref. 61). More recently, industry submitted the results of the completed aquatic monitoring study (Ref. 64).

Sample collection for this study began July 28, 1982, and the final report was received April 14, 1983 (Ref. 64). The protocol provided for sampling of all aryl phosphates at 24 sites mutually selected by EPA and industry where aryl phosphates were likely to be detected (such as downstream from hydraulic fluid production plants), as well as areas in which aryl phosphates have never been monitored but might be present (inner harbor at Baltimore, Md.). In addition, a sampling site was designated downstream from a major landfill where aryl phosphate production wastes are known to be disposed and several pristine sites were also included. Water and sediment samples taken from these sites were analyzed according to procedures set forth in Monsanto's Good Laboratory Practices Manual (Ref. 43).

Monsanto proposed a detection limit of 0.1 ppb for aryl phosphates in water. This detection limit is below the maximum acceptable toxicant concentration (MATC) for the most toxic aryl phosphate (DBDP) to the most sensitive species (rainbow trout) *viz.*, 0.8-1.4 ppb (Ref. 45). For aryl phosphates in sediments, Monsanto noted that current methodology would provide detection limits ranging from 30-200 ppb, and selected a detection limit ranging from 30-200 ppb, and selected a detection limit for aryl phosphates in sediment of 100 ppb.

However, upon receipt of the results of the monitoring study, Agency scientists noted several discrepancies in the quality assurance, analytical method, and statistical treatment of the data obtained. The Agency concluded that the data were ambiguous in certain details of statistical treatment (such as unspecified degrees of freedom for each entry in the data tables), that the results of the sediment data were particularly suspect, thereby necessitating further analyses, and that the field spiked sediment data did not support the lowest observed detection limit (LOD) of 100 ppb, (Refs. 65, 66, 67), as industry and EPA had agreed to in developing the original study protocol and design. For these reasons, the Agency believes that the study can not be relied upon to show that aryl phosphates are not present in the environment at levels of concern, and seeks comment through this ANPR

as to the Agency's interpretation and analysis of the industry environmental monitoring study for the aryl phosphates in water and sediment.

In contrast to the suspected fate of aryl phosphates in hydraulic fluids, release from plasticizer use is predominantly as solid waste to landfills. The fate of such disposal is uncertain, but leaching of substantial quantities of aryl phosphates to surface waters or groundwater is unlikely because they adsorb strongly to soil, have low water solubility, and tend to remain in plastic materials (Refs. 41, 52).

The amount of aryl phosphates released from other sources is relatively low in comparison with the amounts from hydraulic fluid and plasticizer uses. Wastes from lubricant additive and miscellaneous uses appear to be primarily disposed of as solid waste and are primarily directed to landfills (Ref. 42).

4. *Environmental effects.* Although a great deal of environmental effects testing has been performed on the aryl phosphates, the environmental effects data base is not complete for all category members. For instance, a complete comparative toxicity data base for each aryl phosphate in a selected species is not available, nor has industry provided sufficient information to validate the majority of the existing studies. Some chronic aquatic toxicity and bioconcentration data exist for all aryl phosphates except TCP and TXP, although acute data exist for these two compounds (Ref. 45). Sufficient bioconcentration data exist to reasonably predict the bioconcentration potential of the aryl phosphates in fish, but not in benthic organisms (Ref. 45). Chronic aquatic toxicity data for algae or benthic organisms are generally lacking. The Agency and industry initially agreed that the toxicity data of the most toxic aryl phosphate (DBDP) to the most sensitive aquatic organism (rainbow trout) could be used to assess the risk of the aryl phosphate exposure to all organisms in the aquatic environment for those compounds for which data do not exist. Because DBDP was significantly more toxic to aquatic organisms than any of the other category members that have been tested, the Agency believed that an assessment based upon use of DBDP data would provide an ample margin of safety with respect to the potential hazard of other aryl phosphates.

However, the Agency has concluded that because the sediment detection limits, the quality assurance methods, the statistical treatment of the data generated, and the subsequent reliability

of the monitoring study submitted by Monsanto are inadequate, more data are necessary to assess the no-observed-effect level (NOEL) and the subsequent environmental risk of aryl phosphates.

The Agency believes that these data can best be supplied by field monitoring studies which can evaluate whether or not trace concentrations of aryl phosphates are injurious to the environment. The most common approach used for such evaluations includes conducting acute and chronic toxicity tests with water, sediment, or soil collected from a contaminated area and a contiguous noncontaminated area. The presence of the contaminant(s) is the only known difference between these areas. Such studies can also be conducted in the field using a mobile testing unit. Such evaluations have also used in-stream cage toxicity and bioconcentration tests with fish and macroinvertebrates, and comparisons of: species diversity and abundance in water column and sediments; of standing crop (biomass); of ecosystem processes such as photosynthesis/respiration rates; and of colonization and decolonization of natural and artificial substrates. Such methods have been used by Monsanto, other chemical companies, the electric power industry, and others to test effluents. As such, the methods are considered by industry and the Agency to be readily available and standard practice (Ref. 70).

A further advantage of this testing approach over conventional laboratory testing is the ability of the tests to indicate the extent to which the toxicity of these nine aryl phosphates is additive with each other and is multiplicative (synergistic) with other environmental contaminants such as malathion and parathion. It is known that certain aryl phosphate compounds, when used as pesticides, exhibit this multiplicative effect in the presence of contaminants such as malathion and parathion, primarily due to the reactivity of their thiol groups (Refs. 77, 78). As such, the Agency is reexamining the adequacy of comparing the rainbow trout MATC for DBDP independently with the concentration of each aryl phosphate measured in the water column or calculated in the sediment interstitial water to gauge environmental risk potential (the "ester by ester" approach proposed by Monsanto (Refs. 65, 66, 67)). To address this uncertainty, the Agency intends to propose supplemental testing under section 4(a)(1)(B) of TSCA, including tissue residue analysis of biota exposed to water and sediments collected from sites known to contain aryl phosphates at measurable levels. In

this manner, the additive or synergistic effect of the aryl phosphates with other environmental contaminants such as pesticides can be further elucidated.

Because of the soil adsorption characteristics of the aryl phosphates and their tendency to remain bound in landfill-disposed plastic wastes, it is unlikely that they would present significant direct exposures to terrestrial organisms (Refs. 42, 55). However, the recent disposal practices employing estuarine dredge spoils, river sludge and stream tailings as sources of fertilizer and soil adjuvants on crop lands and reclamation sites may provide a source of significant exposure to terrestrial organisms. Therefore, EPA is considering initiating rulemaking under section 4(a)(1)(B) at this time to require testing for effects on terrestrial organisms. Having described these types of available field studies, the Agency seeks comments through this ANPR as to which of these testing methods would be most appropriate for assessing the environmental effects of aryl phosphates.

III. Industry Testing

1. *Mutagenicity.* FMC Corporation has submitted protocols (Ref. 62) to characterize the mutagenic potential of isopropylphenyl diphenyl phosphate using the six-linked recessive lethal (SLRL) mutagen assay in *D. melanogaster* after the method of Brusick (Ref. 5). Accumulated evidence has shown this test to be the most sensitive among different test systems in *D. melanogaster* (Ref. 56). The test measures the frequency of lethal mutations in approximately one-fifth of the total genome of the fly. Testing began in April 1983 and a final report should be available to EPA early in 1984. The protocol called for exposure of at least 200 adult male flies to two dose levels of the test substance and use of both negative and positive controls. A commercial grade of IPDP is being tested. This test is being performed concurrently with the subchronic neurotoxicity study described below. If the result of this test is negative, no further gene mutation testing will be proposed according to the standard TSCA section 4 mutagenicity testing sequence. If the results are positive, EPA will propose additional testing of IPDP to permit assessment of mutagenic risk.

2. *Subchronic neurotoxicity.* FMC Corporation is currently conducting a 90-day subchronic neurotoxicity study in the hen to provide data on the neurotoxicity of IPDP under the testing guidelines set forth for testing under the Federal Insecticide, Fungicide, and Rodenticide Act (43 FR 37374) which

specify negative and positive controls and three dose levels. Triorthocresyl phosphate is being used as the positive control. The hen was selected as the test species because there are extensive background data on the hen and studies indicate that hens and humans have similar sensitivities to neurotoxic organophosphates (Refs. 38, 40). The birds will be examined daily for signs of ataxia. At the conclusion of the 90-day period, the birds will be sacrificed and examined histologically for neural lesions.

3. *Other provisions of testing agreements.* Industry has agreed to adhere to the proposed TSCA Good Laboratory Practice Standards published by the Agency. (44 FR 27334, May 9, 1979, 45 FR 77332, Nov. 21, 1980) and has agreed to permit laboratory audit inspections in accordance with the procedures outlined in TSCA section 11, at the request of authorized representatives of the EPA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the raw data, and that the studies are being conducted with adequate quality assurance procedures.

In addition, industry has agreed that all raw data, documentation, records, protocols, specimens, and reports generated as a result of a study will be retained as specified in the proposed TSCA Good Laboratory Practice Standards published by the Agency and will be made available during an inspection or submitted to EPA if requested by EPA or its authorized representative.

Industry has agreed that TSCA section 14(b)(1)(a)(ii) governs Agency disclosure of all test data submitted pursuant to these studies.

4. *Timing of testing.* Industry began both the proposed 90-day subchronic neurotoxicity and mutagenicity tests of April 1, 1983. Final reports will be submitted to EPA within 12 months of study initiation for subchronic neurotoxicity, and within 9 months for mutagenicity.

IV. Issues for Comment

1. One of the reasons given for the decline in production of TCP, the aryl phosphate indicated by the 1972-74 NOHS to be of greatest exposure concern, is the substitution of aryl phosphates made from synthetic feedstocks. This may mean that the exposure to aryl phosphates made from synthetic feedstocks is considerably greater than the 1973-74 NIOSH survey indicates. How many persons are exposed to these aryl phosphates and

what is the nature of the exposures? Are any new uses expected for any of these substances? What is the projected market growth rate for these substances over the next five years? Did any notable changes occur in the production volume of the individual substances over the last five years?

2. EPA expects to propose a 90-day subchronic neurotoxicity study for TCP, using 3 dose levels. EPA favors testing TOCP. Will the analytical data received from the manufacturers of commercial TCP relative to the TOCP content of their commercial product, when combined with the results of EPA's proposed 90-day subchronic neurotoxicity study using 3 dose levels of TOCP, enable the Agency to reasonably determine or predict the neurotoxicity of a TCP commercial product?

3. Should subchronic neurotoxicity testing of TXP be required based upon indications that certain TXP isomers are acutely neurotoxic and the potential for TXP exposure through use in consumer products?

4. Do data implicate only TOCP as responsible for the suggested reproductive and teratogenic effects of TCP? Should individual TCP isomers be tested separately? Do the existing data for TOCP provide sufficient evidence to indicate that the other aryl phosphates might cause teratogenic or reproductive effects?

5. If there is substantial human exposure to a number of aryl phosphates, considerable testing would be necessary to characterize the toxicity of each individual aryl phosphate. Is there a way to reduce this testing burden by testing a subset of the aryl phosphates, either by forming subcategories of similar aryl phosphates or by testing a subset which spans the structural spectrum of the aryl phosphates category?

6. EPA believes the monitoring studies performed by Monsanto were inadequate to demonstrate that aryl phosphates are not present in the environment at levels which may present a risk to aquatic life. EPA seeks comment on the criteria upon which the Agency based its evaluation of the results of the monitoring study, such as the detection limit sensitivity, quality assurance evaluation, location and selection of sampling sites, statistical treatment of the data obtained, analytical method, and the interpretation of the results.

7. Because monitoring data alone will not allow the calculation of a no-observed-effect level (NOEL), the Agency is considering issuing a site-

specific test protocol for aquatic environmental effects testing for the aryl phosphates which would employ water and sediment actually taken from designated sampling sites, with tissue sample analysis for aquatic and benthic organisms cultured in these media. Is this approach appropriate or should standard ecotoxicity testing protocols be used to fill in missing information? If site-specific testing is performed, which organisms should be cultured in order to best quantify the levels of aryl phosphates in water and sediment? Should ecotoxicity testing for terrestrial organisms be proposed, in addition to aquatic toxicity testing, in order to more accurately evaluate the effect of aryl phosphates on the environment?

8. Should oncogenicity testing of the substantial exposure aryl phosphates be required only if the selected mutagenicity tests produce non-negative results, or should oncogenicity testing of these compounds be required immediately on the basis of TSCA section 4(a)(1)(B) findings?

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VI. Public Record

The EPA has established a public record for this testing decision (docket number OPTS-42038) which is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. Monday through Friday (except legal holidays) in Rm. E-107, 401 M St., SW.,

Washington, DC 20460. The record includes the following information:

(1) Federal Register notice containing the designation of the aryl phosphates to the priority list and all comments on aryl phosphates received in response to that notice.

(2) Communications, consisting of letters, contact reports of telephone conversations, and meeting summaries of Agency-industry and Agency-public meetings.

(3) Industry testing protocols and methods: (a) Monsanto Good Laboratory Practices Manual (Environmental Analysis Laboratory).

(b) Monsanto Good Laboratory Practices Manual (Environmental Assessment Laboratory).

(c) Monsanto Standard Operating Procedure for determination of sample stability under conditions of preservation and storage.

(d) Monsanto Stability Study of Natural Sediment Samples Preserved by Frozen Storage.

(e) Monsanto Standard Operating Procedure for Homogenizing, Subdividing and Preserving Sediment Samples.

(f) Monsanto Standard Practice for Determination of Sorption Constants in Soil and Sediments.

(g) FMC Protocols for Sex-Linked Recessive Lethal Mutagenicity Test in *Drosophila melanogaster* and Subchronic Neurotoxicity Study in the Hen.

(h) Final Report of the 1982 Industry-EPA Phosphate Ester Aquatic Surveillance Program.

(4) Published and unpublished data.

The public record enumerated above includes basic information considered by the Agency in developing this decision. The Agency will supplement the record periodically with additional relevant information received.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601))

Dated: December 21, 1983.

William D. Ruckelshaus,
Administrator.

[FR Doc. 83-34450 Filed 12-28-83; 8:45 am]

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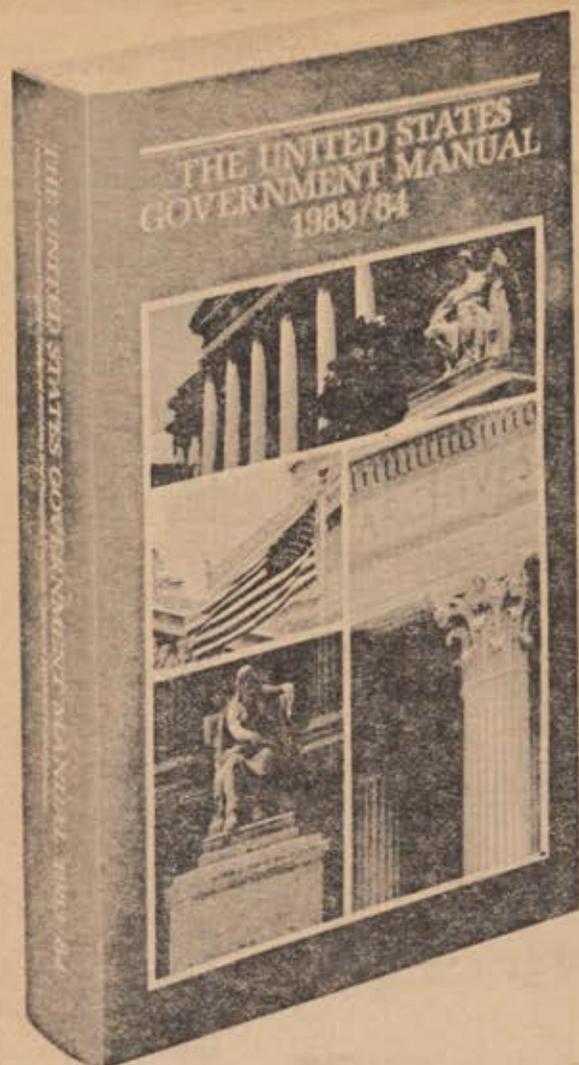
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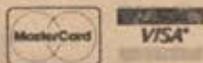
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October 1937

Dear Sir:

I have the honor to acknowledge the receipt of your letter of the 10th inst. regarding the matter mentioned therein.

The information furnished to me is being reviewed and a reply will be made as soon as possible.

Very truly yours,
[Signature]

Very truly yours,
[Signature]

[Name]
[Title]

[Address]
[City, State, Zip]

