

Federal Register

Monday
January 14, 1985

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

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The history of the United States is a complex and multifaceted subject, encompassing a wide range of events, people, and ideas. From the early colonial period to the present day, the nation has undergone significant transformations, shaped by a combination of internal and external forces.

In the early years, the United States was a collection of disparate colonies, each with its own unique identity and interests. However, as the colonies grew and their populations increased, they began to develop a sense of shared purpose and identity. This process was facilitated by a variety of factors, including the shared experience of colonial life, the influence of Enlightenment ideas, and the growing economic interdependence of the colonies.

One of the most significant events in the history of the United States was the American Revolution, which began in 1775 and culminated in the signing of the Declaration of Independence in 1776. This event marked the birth of a new nation, one that was founded on the principles of liberty, equality, and self-determination. The Revolution was a turning point in the nation's history, as it established the United States as a sovereign state and set the course for its future development.

Following the Revolution, the United States entered a period of rapid growth and expansion. The nation's territory expanded westward, and its population increased significantly. This period was characterized by a sense of optimism and a belief in the future of the young nation. However, it was also a time of significant challenges, including the struggle for national unity and the development of a federal government.

The early years of the United States were marked by a series of events that shaped the nation's character and destiny. From the signing of the Constitution in 1787 to the end of the Civil War in 1865, the United States underwent a period of intense political and social change. The Civil War, in particular, was a defining moment in the nation's history, as it resolved the issue of slavery and established the United States as a single, unified nation.

Since the end of the Civil War, the United States has continued to evolve and change. The nation has experienced a period of rapid industrialization and economic growth, followed by a period of social and political reform. The United States has also played a leading role in the world, shaping the course of international events and influencing the lives of people around the globe.

As we look back on the history of the United States, we can see a nation that has overcome many challenges and achieved many great things. The United States is a nation of immigrants, a nation of diverse people and cultures, and a nation that has always been a source of hope and inspiration for people around the world. The history of the United States is a story of resilience, courage, and the pursuit of the American dream.

Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Agricultural Stabilization and Conservation Service

7 CFR Chs. I and VII

Federally Licensed Warehouses; Transfer of Regulations

AGENCY: Agricultural Marketing Service, and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: Consistent with transfer of administration of United States Warehouse Act (USWA), as amended (7 U.S.C. 241 et seq.) from the Agricultural Marketing Service (AMS) to the Agricultural Stabilization and Conservation Service (ASCS) on May 10, 1984, the Department of Agriculture hereby transfers to 7 CFR Chapter VII the regulations affecting warehouses licensed under provisions of the USWA, now contained in 7 CFR Chapter I and rennumbers these regulations accordingly.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Harry J. Wishmire, Assistant to the Director, Warehouse Division, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Room 5962-S, Department of Agriculture, Washington, D.C. 20013, 202-447-3821.

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 (December 15, 1983.) This action is not a major rule as defined by Executive Order 12291 and Departmental Regulation in that it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3)

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

This action is exempt from the provision of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

Merrill D. Marxman, Deputy Administrator, Agricultural Stabilization and Conservation Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because (i) this action imposes no additional economic costs on small entities; and (ii) the use of the service is voluntary; therefore no regulatory flexibility analysis was prepared.

This rule is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Accordingly, neither an environmental assessment nor an environmental impact statement is required and none was prepared.

This action will not have a significant impact specifically upon area and community development, therefore review as established by Executive Order 12291 (February 17, 1981) was not used to assure that units of local government are informed of this action.

Paperwork Reduction Act

In compliance with 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96-511, the information collection requirements, if any, resulting from this proposed revision—specifically reporting requirements—have been submitted to the Office of Management and Budget for review. Comments concerning the information collection requirements contained in this proposed rule may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, Telephone (202) 395-7340.

Background

The U.S. Warehouse Act was passed by Congress in 1916. The Act provides for the licensing of warehousemen who apply to the Secretary of Agriculture, and meet departmental and statutory standards. For many years the Act has been administered by the Agricultural Marketing Service (AMS) and its predecessor agencies.

Secretary's Memorandum Number 1020, dated May 10, 1984, transferred to the Agricultural Stabilization and Conservation Service (ASCS) the warehouse functions of the AMS including the administration of the USWA.

Regulations under that Act for cotton, grain, tobacco, wool, dry beans, nut, sirup, cottonseed and field warehouses are codified in Chapter I of the Code of Federal Regulations (CFR).

The purposes of this action are:

(1) To redesignate 7 CFR, Chapter I, Subchapter E Part 101—Cotton Warehouses, Part 102—Grain Warehouses, Part 103—Tobacco Warehouses, Part 104—Wool Warehouses, Part 106—Dry Bean Warehouses, Part 107—Nut Warehouses, Part 108—Sirup Warehouses, Part 111—Cottonseed Warehouses and Part 151—Field Warehouses as 7 CFR Chapter VII, Subchapter C, Part 735—Cotton Warehouses, Part 736—Grain Warehouses, Part 737—Tobacco Warehouses, Part 738—Wool Warehouses, Part 739—Dry Bean Warehouses, Part 740—Nut Warehouses, Part 741—Sirup Warehouses, Part 742—Cottonseed Warehouses and Part 743—Field Warehouses and renumber the individual sections as appropriate; present Subchapters C through F of Chapter VII will become Subchapters D through G;

(2) Change references to the Agricultural Marketing Service and Consumer and Marketing Service to the Agricultural Stabilization and Conservation Service, and

(3) To renumber references to other sections within individual sections to agree with changes in the numbering system.

These actions will bring the various commodity regulations affecting warehouses licensed under provisions of the USWA within the ASCS CFR

numbering system and will make obvious changes necessary to do so.

The changes are administrative and involve internal procedures. This rule relates to management and to agency organization and procedures. Inasmuch as there will be no changes to the commodity regulations as presently published in 7 CFR, Subchapter E, Chapter I, and as will be published in 7 CFR, Subchapter C, Chapter VII, the change in locations and numbers will be effective upon publication of this rule and are not subject to notice and comment.

Accordingly, 7 CFR Chapters I and VII are amended as follows:

1. In Chapter VII, Subchapters C through F are redesignated as Subchapters D through G. The part numbers are not changed.

2. Subchapter E of Chapter I is redesignated as Subchapter C of Chapter VII. The part numbers are redesignated as set forth in the table below. All section numbers and internal references appearing in the newly redesignated parts are revised as appropriate.

Former part designations	New part designations
7 CFR Chapter I	7 CFR Chapter VII
Subchapter E—Warehouse Regulations	Subchapter C—Regulations for Warehouses
101	735
102	736
103	737
104	738
106	739
107	740
108	741
111	742
151	743

3. In the list below, for each newly redesignated section indicated in the left column, remove the reference in the right column and insert "The Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture."

Section	Reference
735.2(h)	The Agricultural Marketing Service of the Department.
736.2(g)	The Consumer and Marketing Service of the Department.
737.2(f)	The Consumer and Marketing Service of the Department.
738.2(g)	The Consumer and Marketing Service of the Department.
739.2(h)	The Consumer and Marketing Service of the Department.
740.2(f)	The Agricultural Marketing Service.

Section	Reference
741.2(h)	The Consumer and Marketing Service.
742.2(f)	The Consumer and Marketing Service.

(Sec. 28, 39 Stat. 490, 7 U.S.C. 268)

Signed at Washington, D.C. on January 9, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

William J. Manley,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 85-1020 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 401

Federal Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Revocation.

SUMMARY: Because of the issuance of separate parts in Title 7 CFR for each crop insured, the Federal Crop Insurance Regulations (7 CFR Part 401), effective for the 1969 and succeeding crop years, became obsolete effective with the 1980 crop year. The Federal Crop Insurance Corporation (FCIC) has not insured any crop under the provisions of 7 CFR Part 401 since then. The intended effect of this action is to revoke Part 401 of Title 7 CFR. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On November 21, 1967, FCIC published in the *Federal Register* (32 FR 15911) the Federal Crop Insurance Regulations (7 CFR Part 401), effective for the 1969 and succeeding crop years. 7 CFR Part 401 was issued to supersede all previous regulations and to prescribe procedures for all crop insurance contracts, applications and various crop endorsements. Beginning with the 1980 crop year, FCIC issued separate parts in Title 7 for each crop it insured. The regulations were derived from 7 CFR Part 401, thus making the provisions, endorsements, and amendments of Part 401 obsolete. 7 CFR Part 401 remained in effect for crop years prior to 1980, but now has no effective use.

FCIC has determined that this action is not a significant rule and does not require regulatory analysis under Executive Order 12291 or Departmental Regulation 1512-1 (December 15, 1983). This action is a matter of internal Agency procedure and is exempt from publication for notice and comment.

List of Subjects in 7 CFR Part 401

Federal Crop Insurance.

PART 401—[REMOVED AND RESERVED]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby revokes, removes, and reserves 7 CFR Part 401.

Done in Washington, D.C., on November 15, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: January 7, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-975 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 434

[Docket No. 1859S]

Tobacco (Dollar Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this

rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: January 30, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule apply are: Title—Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 6, 1984, FCIC published a notice of proposed rulemaking in the Federal Register at 49 FR 47612, revising and reissuing the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective for the 1985 and succeeding crop years. The public was given 30 days in which

to submit written comments of the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitutes a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language, that although a pilot IYC program is required, a broad IYC program mandatory in nature is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept * * * cotton and rice * * * producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more farmers to consider crop insurance as a risk transfer program than ever before.

Since policy changes must, by contract, be on file by January 30, 1985, good cause is shown for making this rule effective immediately.

Other than minor changes in language and format, the principal changes in the tobacco policy are:

1. *Section 1.a.*—Add the failure of the irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a

premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 9.d.*—Effective for 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This change is required by the change to mandatory APH.

6. *Section 17.c.*—Change the definition for the term "County" to be consistent with other marketing quota crop policies.

7. *Section 17.h.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

8. *Section 17.o.*—Change the definition of the term "Unit" to conform to a single ASCS farm serial number. No further division will be allowed. This change will reduce the problem of transferring production from one unit to another.

9. In addition to the policy changes FCIC also eliminates the codification of Appendix A. Federal crop insurance for tobacco has been expanded into almost all tobacco production counties. The FCIC service offices will be able to advise a producer if tobacco insurance is offered in any county.

List of Subjects in 7 CFR Part 434

Crop insurance, Tobacco (Dollar Plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance

Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective for the 1985 and succeeding crop years, to read as follows:

PART 434—TOBACCO (DOLLAR PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

- 434.1 Availability of the dollar plan of tobacco crop insurance.
 434.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
 434.3 OMB control numbers.
 434.4 Creditors.
 434.5 Good faith reliance on misrepresentation.
 434.6 The contract.
 434.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 434.1 Availability of the dollar plan of tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 434.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 434.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 434) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 434.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 434.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 434.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 434.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant. The

application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Dollar Plan) Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Dollar Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;

- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption;
- (8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;
- unless those causes are excepted, excluded, or limited by the actuarial table of section 9e(7).
- b. We will not insure against any loss of production due to:
- (1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
- (2) The failure to follow recognized good tobacco farming practices;
- (3) The impoundment of water by any governmental, public or private dam or reservoir project; or
- (4) Any cause not specified in section 1a as an insured loss.
2. Crop, acreage, and share insured.
- a. The crop insured will be tobacco of the type shown as insurable by the actuarial table, which is grown on insured acreage and for which an amount of insurance and premium rate are provided by the actuarial table.
- b. The acreage insured for each crop year will be an insurable type of tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.
- c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.
- d. We do not insure any acreage:
- (1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
- (2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;
- (3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;
- (4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;
- (5) Planted to tobacco of a discount variety under provisions of the tobacco price support program;
- (6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table; or
- (7) Planted for experimental purposes.
- e. If insurance is provided for an irrigated practice:
- (1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and
- (2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

(3) Insurance will not attach on an irrigated basis on acreage otherwise insurable on such basis unless it is designated as irrigated at the time the acreage is reported.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. In addition to the provisions contained in section 18, if for any crop year the support price per pound is reduced 10 percent or more below the support price per pound for the previous crop year, the dollar amounts of insurance per acre for the current crop year will be adjusted by multiplying the support price per pound (rounded to the nearest cent, less four cents per pound for warehouse charges) for the current crop year by the amount in pounds per acre shown by the actuarial table for this purpose. If a tobacco price support program is not in effect for the kind of tobacco which includes the insured type for any crop year, the amounts in pounds per acre shown in the actuarial table will be multiplied by the market price for that crop year to determine the amounts of insurance per acre for such crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tobacco policy for the

1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit

(except for curing, grading, packing or

immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12..... November 30;

(2) Type 13..... October 31;

(3) Type 14..... September 30;

(4) Type 36..... January 31;

(5) Types 31 and 35..... February 28;

(6) All other types..... March 31.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give use notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any tobacco is destroyed or damaged by fire during the insurance period.

(5) Where tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us sufficient time to inspect the cured tobacco prior to its sale or other disposition.

(6) Notice must be given upon completion of harvest of any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed unless notice has already been given under this section.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Subtracting therefrom the value of the total production of tobacco to be counted (see section 9e); and

(3) Multiplying the remainder by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The value of the total production to be counted for a unit will include the value of all harvested and appraised production.

(1) The value of production to count will include:

(a) The gross returns (less four cents per pound for warehouse charges) from tobacco sold on the warehouse floor;

(b) The fair market value of the tobacco sold other than on the warehouse floor;

(c) The fair market value of the tobacco harvested and not sold;

(d) The fair market value of any unharvested tobacco as if such tobacco were harvested and cured; and

(e) The current year's support price per pound (less four cents per pound for warehouse charges) for appraisals made by us for poor farming practices or uninsured causes of loss. (If a price support program is not in effect, such appraised production will be valued at the market price for the current crop year.)

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of and, if the best offer you receive for any such tobacco is considered by us to be inadequate, to obtain additional offers on your behalf.

(3) The stalks on any insured acreage of tobacco types 11, 12, 13, or 14 must not be destroyed until we give written consent. For any such acreage on which the stalks have been destroyed prior to such consent, we may make an appraisal on such acreage of not less than the amount of insurance per acre.

(4) The value of appraised production to be counted will include:

(a) The value of unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than 35 percent of the amount of insurance for all other unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you have elected to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a

final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	Mar. 31.
All other North Carolina counties and all other states.	Apr. 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date (January 30 for the 1985 crop year only). Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dollar tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county even though physically located in another county.

d. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the amount of tobacco in pounds per acre shown in the actuarial table for such purpose is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

i. "Market Price" means the price contained in the actuarial table and for tobacco:

(1) Types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36 and 37 is the average auction price for the applicable type (less four cents per pound for warehouse charges) in the belt or area; and

(2) Types 54 and 55 is the average price for the applicable type in the belt or area.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Support price per pound" means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. For any crop year in which a price support for the insured type is not in effect, the market price for that crop year will be used.

n. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

o. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is

identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on January 18, 1985.

Dated: January 7, 1985.

Approved by: Merritt W. Sprague, Manager.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 85-976 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 436

[Docket No. 1837S]

Tobacco (Guaranteed Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when

acreage, share or practice is underreported; (4) changing the definition of unit to encompass the entire ASCS farm serial number; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title-Crop Insurance; Number 10.450.

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

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an

Environmental Impact Statement is needed.

On Monday, November 26, 1984, FCIC published a notice of proposed rulemaking in the *Federal Register* at 49 FR 46405, revising and reissuing the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitutes a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; Under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; Under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language, that although a pilot IYC program is required, a broad IYC program mandatory in nature is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more farmers to consider crop insurance as a risk transfer program than ever before.

Other than minor changes in language and format, the principal changes in the tobacco policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be

insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 9.d.*—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

6. *Section 17.b.*—Add a definition for the term "ASCS" to clarify its use in the definition of the term "Unit".

7. *Section 17.d.*—Change the definition for the term "County" to be consistent with other marketing quota crop policies.

8. *Section 17.j.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

9. *Section 17.n.*—Change the definition of the term "Unit" to conform to a single ASCS farm serial number. No further division will be allowed. This change will reduce the problem of transferring production from one unit to another.

10. In addition to the policy changes FCIC also eliminates the codification of Appendix A. All FCIC service offices will be able to advise a producer where tobacco insurance is offered.

Since policy changes must, by contract, be on file by January 15, 1985.

good cause is shown for making this rule effective immediately.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (Guaranteed Plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1985 and succeeding crop years, to read as follows:

PART 436—TOBACCO (GUARANTEED PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

- 436.1 Availability of the guaranteed plan of tobacco crop insurance.
 436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
 436.3 OMB control numbers.
 436.4 Creditors.
 436.5 Good faith reliance on misrepresentation.
 436.6 The contract.
 436.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 436.1 Availability of the guaranteed plan of tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 436.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 436) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 436.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 436.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 436.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to

year. The forms referred to in the contract are available at the applicable service offices.

§ 436.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Plan) Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Cause of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) Failure of the irrigation water supply

due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

- (1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
- (2) The failure to follow recognized good tobacco farming practices;
- (3) The impoundment of water by any governmental, public or private dam or reservoir project; or
- (4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(5) Planted tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table; or

(7) Tobacco planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause; and

(3) Insurance will not attach on an irrigated basis on acreage otherwise insurable on such basis unless it is designated as irrigated at the time the acreage is reported.

f. We may limit the insured acreage to any acreage limitation established under any act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

- a. All the acreage of insurable types of tobacco in the county in which you have a share;
- b. The practice; and
- c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantee will be reduced by 35 percent for any unharvested acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

- a. Total destruction of the tobacco;
- b. Weighing-in at the tobacco warehouse;
- c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);
- d. Final adjustment of a loss; or
- e. April 30 following the normal harvest period.

8. Notice of damage or loss.

a. In case of damage or probable loss: (1) You must give us written notice if: (a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

- (a) Total destruction of the tobacco on the unit;
- (b) The date marketing or other disposal of the insured tobacco is completed on the unit; or
- (c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

- (1) Total destruction of the tobacco on the unit;
- (2) The date marketing or other disposal of the insured tobacco on the unit is completed; or
- (3) The calendar date for the end of the insurance period.

b. We will not pay an indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the value per pound by the market price per pound; and

(b) Multiplying the product by the number of pounds of such tobacco.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraisal in excess of 35 percent of the production guarantee for all other unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form ECI-78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You must not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the

partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you will be deemed to have elected. All contract changes will be available at your service office by December 31 (January 15 for the 1985 crop year only) preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

d. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means:

The completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

i. "Market price" means the average price determined for the applicable type of tobacco. Such price will be the:

(1) Average price for the preceding crop year for any unit which is not to be harvested; or

(2) The average price for the current crop year for any unit or part thereof which is harvested.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 10, 1984.

Dated: January 8, 1985.

Approved by: Merritt W. Sprague,
Manager.

Peter F. Cole,
Secretary, Federal Crop Insurance
Corporation.

[FR Doc. 85-1049 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 437

[Docket No. 1846S]

Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective

for the 1985 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) revising the insurance period in certain counties; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to CFR

Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, November 23, 1984, FCIC published a notice of proposed rulemaking in the *Federal Register* at 49 FR 46149 revising and reissuing the Canning and Freezing Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitutes a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; Under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language, that although a pilot IYC program is required, a broad IYC program mandatory in nature is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more farmers to consider crop insurance as a risk transfer program than ever before.

Since policy changes must, by contract, be on file by January 15, 1985, good cause is shown for making this rule effective immediately.

Other than minor changes in language and format, the principal changes in the sweet corn policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 7.e.*—Change the end of the insurance period in certain counties in Washington and Oregon to more closely conform to the normal harvest period in that location.

5. *Section 9.d.*—Effective for the 1986 and succeeding crop years allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. *Section 9.e.*—Add a new subsection to clarify the effect of untimely harvest on total production to be counted.

7. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

8. *Section 17.g.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

9. In addition to the policy changes FCIC also eliminates the codification of Appendix A. All FCIC service offices in the United States will be able to advise a producer if sweet corn insurance is offered in a particular county.

List of Subjects in 7 CFR Part 437

Crop insurance, Sweet corn.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Sweet Corn Crop Insurance Regulations (7 CFR Part 437), effective for the 1985 and succeeding crop years, to read as follows:

PART 437—SWEET CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

- 437.1 Availability of sweet corn crop insurance.
- 437.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 437.3 OMB control numbers.
- 437.4 Creditors.
- 437.5 Good faith reliance on misrepresentation.
- 437.6 The contract.
- 437.7 The application and policy.

Authority: Secs. 506, 516, Pub.L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crops Years

§ 437.1 Availability of sweet corn crop insurance.

Insurance shall be offered under the provisions of this subpart on sweet corn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 437.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sweet corn which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 437.3 OMB Control numbers.

The information collection requirements contained in these regulations (7 CFR 437) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

§ 437.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 437.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sweet corn insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agency or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 437.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form

prescribed by the Corporation. The contract shall cover the sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 437.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sweet corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service office and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sweet Corn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy

in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.
a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

- (1) Sweet corn not being timely harvested, unless it is determined that, due to unusual weather conditions, a substantial number of acres of sweet corn in the area were ready for harvest at the same time;
- (2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
- (3) The failure to follow recognized good sweet corn farming practices;
- (4) The impoundment of water by any governmental, public or private dam or reservoir project; or
- (5) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be canning and freezing sweet corn grown on insured acreage, for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be sweet corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of planting.

d. We do not insure any acreage:
(1) Of sweet corn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage.);

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to sweet corn, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Of volunteer sweet corn;

(7) Planted to a type or variety of sweet corn not established as adapted to the area or excluded by the actuarial table;

(8) Planted for the development or production of hybrid seed or for experimental purposes; or

(9) Planted with a crop other than sweet corn.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good sweet corn irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good sweet corn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price(s) will, for the purpose of this contract, be treated as a contract under which you have the share in the crop.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sweet corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sweet corn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices at which indemnities shall be computed.

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the sweet corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceed .80 no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sweet corn is planted and ends at the earliest of:

a. Total destruction of the sweet corn;

b. Harvest;

c. Final adjustment of a loss;

d. The date by which sweet corn acreage should have been harvested; or

e. The following dates of the calendar year in which the sweet corn is normally harvested:

(1) Benton, Clackamas, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties, Oregon; and Clark and Cowlitz Counties Washington..... October 20;

(2) All other Washington Counties..... October 10;

(3) All other Oregon counties and all other states..... September 20.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined. A representative sample of the unharvested sweet corn (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(3) If you are going to claim an indemnity on any unit which is not to be harvested or on which harvest has been discontinued, notice must be given not later than 48 hours:

(a) Before the time harvest would normally start; or

(b) After discontinuance of harvest.

If such notice is not given or if unharvested acreage is not left intact, the appraisal on such acreage will be the production guarantee.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sweet corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sweet corn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sweet corn to be counted (see section 9c);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium

determined to be due, the production guarantee on the unit will be computed on the information reported and not on the information actually determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production (Tons) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sweet corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(2) If any acreage of sweet corn is not timely harvested the production to count will be the greater of the:

(a) Appraised production; or

(b) Dollar amount received from the processor divided by the processor's base contract price per ton.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested sweet corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire

insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. [Recovery of loss from a third party.]

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to

the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment of set-off are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service by December 31 (January 15 for the 1985 crop year only) preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sweet corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sweet corn is normally grown and is designated by the calendar year in which the sweet corn is normally harvested.

d. "Harvest" means the removal of the ears and husks from the stalks for the purpose of delivery to the processor.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of sweet corn in the county on the date of planting for the crop year:

(1) In which you have 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to effect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 26, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: January 8, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-1048 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 498; Lemon Reg. 497; Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 230,000 cartons during the period January 13-19, 1985, and increases the quantity of lemons that may be shipped to 255,000 cartons during the period January 6-12, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective January 13, 1985, and the amendment is effective for the period January 6-12, 1985.

FOR FURTHER INFORMATION CONTACT:

William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 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 final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Lemon 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 currently in effect. The committee met publicly on January 8,

1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good.

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 and amendment are 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, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.798 is added to read as follows:

§ 910.798 Lemon Regulation 498.

The quantity of lemons grown in California and Arizona which may be handled during the period January 13, 1985, through January 19, 1985, is established at 230,000 cartons.

2. Section 910.797 Lemon Regulation 497 is revised to read as follows:

§ 910.797 Lemon Regulation 497.

The quantity of lemons grown in California and Arizona which may be handled during the period January 6, 1985, through January 12, 1985, is established at 255,000 cartons.

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

Dated: January 9, 1985.

Thomas R. Clark,

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

[FR Doc. 85-1056 Filed 1-10-85; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 989

[Docket No. F&V AO-198-A12]

Raisins Produced From Grapes Grown in California; Order Amending Order**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule amends the California raisin marketing agreement and order program. The amendment was favored by the required two-thirds majority of growers voting in a referendum. The amendment adds authority for a Raisin Diversion Program (RDP). Provision was also made for an increase in the desirable carryout for Natural (sun-dried) Seedless (NS) raisins and for related conforming changes needed in the event the Committee determines an RDP is warranted. The RDP will provide the industry with a means of reducing raisin production by decreasing the quantity of grapes grown to be dried into raisins in order to bring the raisin supply more closely in line with market needs. The increase in the desirable carryout will make more NS raisins available from the prior year's production for early season shipment until new crop raisins are ready for processing and shipment in order to assist the industry to increase raisin shipments. The changes are expected to improve the effectiveness and operation of the marketing order program. The amendments were based on proposals submitted by the Committee which works with USDA in administering the program.

Based on the proposals made by the Committee, a public hearing was held on October 2, 1984, in Fresno, California. A referendum was conducted by the Department by mail ballot during December 15 through 24, 1984.

EFFECTIVE DATE: These regulations will become effective February 13, 1985, except that the addition of the RDP, § 989.56, will become effective January 8, 1985.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing—Issued September 20, 1984, and published September 24, 1984 (49 FR 37424); Final Decision—Issued December 5, 1984, and published December 11, 1984 (49 FR 48194). A correction to the final decision and

referendum order was issued December 20, 1984 and published December 21, 1984 (49 FR 49834).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is not subject to the requirements of Executive Order 12291.

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

Findings and determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record it is found that:

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

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to

subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

(b) *Additional findings.* For good cause it is necessary and in the public interest to make all of the amendatory provisions relating to the RDP effective upon signature. The authority for the RDP must be available immediately for the Committee to consider its adoption for the 1984-85 crop year. The raisin producers need to be given advance notice in order to consider their pruning and cultural practices during the dormant season which usually occurs during the months of December and January. If the 30 day requirement period after publication were adopted for this year, producers would not be permitted sufficient time to participate in the program.

The increase in the desirable carryout, the change in the "definition of producer", and the addition to the marketing policy of tonnage diverted will not be used until at least the end of the crop year ending July 31, 1985. Therefore, these changes will not become effective until 30 days after publication in the *Federal Register* (section 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as amended, and as hereby further amended) who, during the period August 1, 1983 through July 31, 1984, handled not less than 50 percent of the volume of such raisins covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during

the period August 1, 1983 through July 31, 1984 (which has been deemed to be a representative period), have been engaged within the State of California, in the production of grapes which were sun-dried or dehydrated by artificial means until they became raisins for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subject in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of raisins produced from grapes grown California shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

PART 989—[AMENDED]

1. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins: *Provided*, That a "producer" shall include any person whose production unit has qualified for diversion under a diversion program announced by the Committee.

2. Section 989.54(a) is amended by revising the fifth sentence to read as follows:

§ 989.54 Marketing policy.

(a) *Trade demand.* * * * The desirable carryout shall be increased from 45,000 to 60,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for three crop years following the effective date of this amended subpart. * * *

3. Section 989.54(b) is amended by adding a proviso at the end of the first sentence to read as follows:

§ 989.54 Marketing policy.

(b) * * * *Provided*, That such production estimate shall include by varietal type the raisins handlers are expected to acquire from producers and the total tonnage of raisins diverted under a raisin diversion program.

4. A new § 989.56 is added to the order to read as follows:

§ 989.56 Raisin diversion program.

(a) *Announcement of program.* On or before November 30 of each crop year, the Committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory and other matters relating to the quantity of raisins of all varietal types. When the Committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage: *Provided*, That during the 1984-85 crop year, these actions shall be taken as soon as practicable after the effective date of this amended subpart.

(b) *Voluntary diversion.* No producer shall be required to participate in any raisin diversion program.

(c) *Issuance of diversion certificates.* After the Committee announces a raisin diversion program, any producer may divert grapes of his/her own production and receive from the Committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion.

(d) *Redemption of diversion certificates.* Handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established for the entire tonnage represented on the diversion certificates. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled.

(e) *Implementation of the program.* The Committee shall establish, with the approval of the Secretary, such rules and regulations as may be necessary for the implementation and operation of a raisin diversion program.

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

Dated: January 8, 1985.

The amendatory provisions relating to the Raisin Diversion Program will become effective on January 8, 1985. All other changes will become effective 30 days after publication in the Federal Register.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-979 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-02-N

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Sick Pay

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These rules implement section 3 of Pub. L. 97-123 with respect to employees of State and local governments who are covered by Social Security pursuant to agreements under section 218 of the Social Security Act (the Act). They provide that sickness and accident disability payments (or sick pay) paid in the six calendar months after the calendar month the employee stopped working are wages (with certain exceptions) when paid to the employee or the employee's dependents. Corresponding provisions with respect to Social Security tax requirements for private sector employers and employees have been implemented by Internal Revenue Service (IRS) regulations. Also, to the extent that "wages" are defined for other purposes, e.g., Social Security benefit computation, these regulations are applicable to all covered employees. Under the prior law, sick pay paid in the six calendar months after the employee stopped working was not wages if paid under a qualified plan or system set up by the employer.

We published a Notice of Proposed Rulemaking on April 20, 1984 (49 FR 16805) concerning these sick pay provisions. No comments were received. No changes have been made with respect to these final regulations except for minor, technical corrections.

DATE: These regulations are effective January 14, 1985.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security

Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-3408.

SUPPLEMENTARY INFORMATION: Section 209(b) of the Social Security Act, which describes when sick pay under a plan or system is not treated as wages for Social Security coverage purposes, was amended by section 3(a) of Pub. L. 97-123. The amended section excludes from the term "wages" only payments received under a workmen's compensation law. The parallel section in the Internal Revenue Code (IRC)—section 3121(a)(2)—was similarly amended.

The statutory amendment was effective on January 1, 1982. The attached regulations which implement this statutory amendment provide that sick pay paid to an employee or his or her dependents on or after January 1, 1982 in the 6-calendar month period immediately following the last calendar month in which the employee worked is wages except that any portion of the sick pay attributable to the employee's own contribution to a sickness or accident disability plan is not wages. Under the law that was in effect prior to January 1, 1982, sick pay paid in the 6-calendar month period following the last month in which the employee worked and paid under a qualified plan or system set up by the employer, is not wages.

Sick pay paid more than six calendar months after the calendar month in which the employee stopped working continues to be excluded from wages. Also, payments to employees under a worker's compensation law continue not to be treated as wages and we are including in the attached regulations a statement to that effect.

Sick Pay Paid by a Third Party Payor

In accordance with the statutory amendment, these rules provide that sick pay includes third party payments (e.g., insurance company payments). Consequently, sick pay paid to an employee by a third party is wages unless it is attributable to the employee's contributions to a sickness or accident disability plan (e.g., employee-paid insurance premiums).

Note.—We published on September 30, 1983 in the *Federal Register* (see 48 FR 44771) a final regulation on a State government's responsibility to pay Social Security contributions (equivalent to the combined employer and employee tax imposed on private employers) on the sick pay paid the employee by the third party. This separate regulation provides that sick pay is considered paid when the employer receives notice of the payment from the third party. This regulation should allow employers

adequate notice of the sick pay payment so that they may make timely payment of the Social Security contributions and avoid being assessed interest charges for late payment.

Temporary Disability Insurance (TDI) Payments

Section 3(e) of Pub. L. 97-123 provides that payments under a State's temporary disability insurance (TDI) laws are wages. These State TDI laws compensate employees who are unable to pursue gainful employment because of short-term nonoccupational sickness or accident disability. Only 6 States have such programs: California, Rhode Island, New York, New Jersey, Hawaii, and Puerto Rico.

These regulations provide that TDI payments made in the 6-calendar months period immediately following the last calendar month in which the employee worked for the employer are wages, excluding any portion of the payments attributable to the employee's contribution.

Regulatory Procedures

Executive Order 12291—These rules have been reviewed under Executive Order (EO) 12291 and do not meet the criteria for a major regulation. They will directly affect only States (and, indirectly local government employers). Determinations of amount of Social Security contributions due on wages of State and local employees for Social Security purposes is under the jurisdiction of the Social Security Administration (SSA). (Taxation of wages of other employees for Social Security purposes is under the jurisdiction of the Internal Revenue Service.) Increased contributions from coverage of sick pay of employees of State and local governments should remain in the \$12 million through \$14 million range for each fiscal year from 1984 through 1986. Since these rules do not have an effect on the economy of \$100 million or more in a single year, they do not constitute a major regulation under E.O. 12291. Additionally, these costs are primarily attributable to a change in the law and not to any regulatory changes that are based on the statutory changes.

Paperwork Reduction Act—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities because any impact will be solely the result of legislation rather than these regulations. Therefore, a regulatory flexibility analysis, as required by Pub.

L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs; No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

List of subjects in 20 CFR 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: October 5, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: December 11, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—[AMENDED]

For the reasons set out in the preamble, Part 404 of Chapter III, title 20, of the Code of Federal Regulations is amended as follows:

Subpart K—Employment, Wages, Self-Employment and Self-Employment Income

1. The authority citation for Subpart K reads as follows:

Authority: Secs. 205, 209, 210, 211, 229, 230, 231, and 1102 of the Social Security Act, 53 Stat. 1368, 49 Stat. 625, 64 Stat. 492, 81 Stat. 833, 86 Stat. 416, 86 Stat. 1367, 49 Stat. 647; sec. 5 of Reorganization Plan No. 1 of 1953; 67 Stat. 631, 42 U.S.C. 405, 409, 410, 411, 420, 430, 431, and 1302; and 5 U.S.C. Appendix.

2. In § 404.1049 paragraph (a)(2) is revised to read as follows:

§ 404.1049 Payments under an employer plan or system that are excluded from wages.

(a) * * *

(2) You or your dependents'—

(i) Medical or hospitalization expenses connected with sickness or accident disability; or

(ii) Death.

3. In § 404.1051, the section title is revised to read as follows:

§ 404.1051 Payments on account of sickness and accident disability or related medical or hospitalization expenses—paid more than 6 months after work stopped.

4. A new § 404.1051A is added to read as follows:

§ 404.1051A Payments on account of sickness and accident disability—paid in the 6-month period after work stopped.

(a) *Payments made prior to January 1, 1982.* Sickness and accident disability

payments that are paid by the employer to or on behalf of the employee or employee's dependents or into a fund to provide for such payments are excluded from wages if—

- (1) Paid prior to January 1, 1982 and
- (2) Paid under a plan or system set up by the employer; or
- (3) Paid more than 6 calendar months after the month the employee last worked.

(b) *Payments made after December 31, 1981.* (1) Except when the payment amount is attributable to the employee's contribution, any sickness or accident disability payments paid by an employer or third party to an employee or the employee's dependents, or paid under a State temporary disability insurance (TDI) program to an employee, that are paid within the initial 6-calendar month period after the last calendar month the employee worked, are wages.

(2) Employee contributions to employers' sickness and accident disability plans may include the premiums paid by an employee under an insurance contract providing for payments to the employee in the event of disability or the contributions paid by an employee to a State TDI fund for payments to the employee in the event of disability. Such contributions are wages when deducted from the employee's pay, but the benefits paid to the employee or employee's dependents as sickness or accident disability payments that are based on such contributions are not wages.

(c) Employer premium contributions for insurance or into a fund to provide payments to an employee upon the future occurrence of sickness and accident disability are not wages. However, see paragraphs (a) and (b) of this section regarding payments from the insurance or fund paid to the employee upon the occurrence of sickness or accident disability.

(d) Payments that are paid to the employee under a worker's compensation law are not wages.

(e) For purposes of this section, the employee's dependents include the employee's husband or wife, children, and members of the immediate family.

[FR Doc. 85-1008 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-11-M

Food and Drug Administration

21 CFR Parts 105 and 107

[Docket No. 82N-0130]

Infant Formula; Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing labeling requirements for infant formula, including the label declaration of nutrients required by the Infant Formula Act of 1980; a "use by" date; a warning statement to inform consumers of consequences of improper preparation or use; a statement informing consumers that infant formula should be used as directed by a physician; and directions for preparation and use, including pictograms and a symbol to indicate the need for dilution. An exemption from certain labeling requirements is provided for individual containers containing infant formula in a ready-to-feed form in multiunit packages. This final rule provides necessary information to health care professionals and consumers, including those who cannot read English, on the appropriate preparation and use of infant formulas to assure the health and well being of formula-fed infants.

DATES: This final rule will become effective on January 14, 1986 for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after that date. Objections by February 13, 1985 on §§ 105.65 (c), (d), and (e) and 107.10.

ADDRESS: Objections should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 12, 1983 (48 FR 31880), FDA proposed to establish labeling regulations for infant formula to: (1) Require that nutrients be declared in a specified format; (2) require a statement of the number of fluid ounces supplying 100 kilocalories; (3) require the declaration of water and carbohydrate levels in addition to the nutrients required by the Infant Formula Act; (4) permit vitamin A, vitamin D, and vitamin E content to be declared parenthetically in alternative units in addition to the required International Units; (5) require a statement concerning iron content on the principal display panel; (6) require the heading

"DIRECTIONS FOR PREPARATION AND USE" and beneath this heading directions for storage, preparation, and use; (7) require a pictogram depicting the major steps for preparation of that infant formula; (8) require a "Use by" or

"Expiration" date and its declaration; (9) require the statement "add water" or "do not add water", as appropriate, to appear on the principal display panel; and (10) require, for concentrated infant formulas, a symbol indicating the need for the addition of water on the principal display panel. Interested persons were given until September 12, 1983, to comment on the proposal.

In response to the proposal, FDA received 96 letters, each containing 1 or more comments, from consumers, health care professionals, universities, food assistance program directors, trade organizations, State and county departments of health, consumer advocacy organizations, a foreign government, and professional organizations. All letters, except one, supported the proposal, at least in part. A number of comments did not address the issues raised by the proposal and are not discussed in this document. In response to the comments, FDA revised some proposed requirements and added some provisions. These changes (1) permit sodium, potassium, and chloride levels to be declared parenthetically in alternative units; (2) permit, under certain conditions, the declaration of nutrients not required by the Infant Formula Act; (3) require "use by" dating, rather than "use by" or "expiration" dating; (4) delete the proposed requirement for declaration of maximum recommended storage temperatures; (5) require a warning statement about the importance of following directions for preparation or use; (6) require a statement that parents should consult their physicians about the use of infant formulas; and (7) provide an exemption from some labeling requirements for individual containers of ready-to-feed formulas in multiunit packages.

The comments on the proposal and the agency's responses are as follows:

GENERAL COMMENTS

1. One comment requested that the lettering size for the nutrient information be increased to at least one-eighth inch high and that any warning or directional information be increased to at least one-quarter inch high.

FDA advises that this requested change is inappropriate for this proceeding. The agency's minimum type size requirements (one-sixteenth inch high) for most food packages, including infant formulas, are set forth in § 101.2 (21 CFR 101.2) and therefore any change in these requirements would have to be proposed in the Federal Register with an opportunity for interested persons to comment. The agency will entertain petitions to amend § 101.2 from anyone

interested in changing the minimum type size requirements for infant formula labels where the petitioner can demonstrate a need for such a change.

2. One comment suggested requiring package inserts so that written information that could be verified by the consumer could be provided.

The agency has not adopted this requirement because it would be merely a duplication of the label information required by these regulations. Thus, requiring package inserts would be costly to manufacturers, thereby increasing the cost without additional benefits to the consumer. The comment provided no information to justify the additional cost of requiring package inserts.

3. One comment asked how much cost would be added to infant formulas by requiring these label changes.

The agency stated in the preamble to the proposal that these regulations will impose a one-time estimated cost of \$50,000 for the industry. Because sales of infant formulas in the United States are estimated to exceed \$500 million annually, the cost of these regulations will not have a perceptible effect on the retail price of infant formula. The few revisions made in the final rule will not significantly change these estimates.

4. One comment stated that artificial colors or flavors should not be in foods.

The agency advises that it is unaware of any manufacturer who uses color additives or artificial flavors in infant formulas. The agency further advises, however, that if a manufacturer wanted to use color additives or artificial flavors in infant formulas, the agency could not preclude such usage if all applicable regulations governing the use of color additives and flavoring ingredients are complied with. The agency points out that, in the event color additives or artificial flavors are used, § 101.22(c) requires their declaration on the label, thereby giving those consumers who wish to avoid these ingredients the opportunity to do so.

5. One comment recommended extending the effective date to at least 1 year after the date of publication. The comment stated that this final rule requires changing labels for every product made by every infant formula manufacturer, and that these changes cannot be completed in 6 months.

The agency agrees with this recommendation. The agency encourages manufacturers to make these changes as soon as possible. Except as to any provisions that may be stayed by the filing of proper objections, all affected products initially introduced or initially delivered for introduction into interstate commerce on or after January

14, 1986 shall fully comply with this final rule.

6. One comment suggested the elimination of concentrated infant formulas because of the possibility of inappropriate and unsafe use of the product. Another comment recommended that FDA prohibit the sale of infant formulas in areas where consumers may not fully understand how to prepare and use the product safely.

The agency advises that Congress has not given FDA the authority to prohibit the sale of a food or the authority to seize a food unless it is adulterated or misbranded. Moreover, FDA has no data to suggest that concentrated infant formulas present a safety problem.

7. Two comments expressed concern about "overloaded" and complex regulations and their lack of clarity.

The agency does not believe that the regulations are unclear, overloaded, or overly complex. To the contrary, the objective of this final rule is to simplify, clarify, and provide a uniform format for infant formula labeling. Many manufacturers are currently voluntarily providing much of the information required by this final rule. However, the information provided is not always presented in a clear, concise, uniform manner. The agency believes that this final rule will rectify this.

8. One comment suggested providing the same information that is required in the United States on labels of exported infant formula.

Such a requirement would be impossible to meet if the labeling requirements of the country of destination are incompatible with U.S. labeling requirements. Furthermore, under section 801(d) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(d)), an infant formula produced in the United States but intended for export need not comply with these labeling regulations if it complies with the requirements of the country of destination. Therefore, FDA has not made the requested change.

9. One comment suggested that labeling information should include whether or not the product is kosher.

Section 101.29 specifically permits the voluntary use of the term "kosher" on labels and gives guidance on its use. Therefore, the agency concludes that the current regulations contain adequate provisions for the labeling of infant formulas as "kosher" and has not made the requested change.

Nutrient Information

10. Several comments suggested that the source of major nutrients, such as protein or fat, be identified clearly on

the label because some infants have allergies to specific sources of a nutrient such as milk protein. A few comments recommended listing items such as salt, sugar, water, fat, and monosodium glutamate (MSG) on the label.

The label declaration of the ingredients requested by these comments is already required by existing regulations. Section 105.65(a) (21 CFR 105.65(a)) specifically requires that foods represented for special dietary use for infants bear the common or usual name of each ingredient including flavors and colors. Section 105.65(b) states that if such food for infants, or any ingredient thereof, consists of an ingredient that does not clearly reveal the specific plant or animal that is its source, such name shall be so qualified as to reveal clearly the specific plant or animal that is the source. Therefore, those individuals concerned with the source of an ingredient or with the presence of salt, sugar, water, fat, or MSG can obtain the information they need from the ingredients statement. In addition, if the infant formula is not a milk-based formula, the source of the protein, i.e., soy or meat, is also typically identified prominently on the principal display panel. Therefore, no changes are made in this final rule concerning the declaration of these ingredients.

11. Two comments recommended that "cow's milk" be declared on the label rather than the generic word "milk."

The agency advises that § 131.110 (21 CFR 131.110) defines milk as the lacteal secretion obtained from one or more healthy cows. All foods containing "cow's milk" list "milk" as the ingredient. If some other milk is an ingredient then the description of the ingredient includes the animal's name (e.g., goat's milk). The comment provided no information or data to justify making the suggested change. Therefore, no changes are made in the final rule concerning the declaration of "cow's milk."

12. One comment stated that a tabular format for nutrient information cannot be accommodated on labels for 8- and 13-fluid ounce cans because current minimum type size requirements, along with additional required information in the "Directions For Preparation and Use" section, preclude compliance with this requirement.

The agency disagrees that the information required by this regulation cannot be accommodated on the labels of 8- and 13-fluid ounce cans. Many 8- and 13-fluid ounce cans used by infant formula manufacturers either now bear or previously bore a tabular declaration

of nutrients and most of the other information required by this final rule. This indicates to the agency that all the information required by the regulations can be accommodated on the cans.

13. One comment, from an official of a foreign government, suggested that the proposed order of declaring nutrients in a tabular format be modified to be consistent with their regulation in an attempt to "harmonize" the regulations of the two countries.

The agency concludes that it is impossible to completely "harmonize" the regulations of the United States and foreign countries. Each country has its own labeling requirements, such as language, units of measurements, etc., which may require the development of separate labels for each country to which a manufacturer wishes to export. The agency agrees that modifying the order of the nutrient declarations on the label may "harmonize" somewhat the product labels of the United States and one foreign country, but it provides no guarantees for any international consistency in infant formula labeling. Therefore, no change in the order of declaring nutrients has been made in this final rule.

14. One comment stated that there was no reason to include a listing of specific nutrients in the labeling of an infant formula and suggested that the statement "the product provides 100% of the known nutrient needs of a normal infant" replace the proposed nutrient table. The comment further suggested that the labeling information be targeted for use by consumers and that professionals could obtain this information in other ways. Another comment recommended that the declaration of linoleic acid be deleted because all infant formulas contain essential fatty acids well in excess of the statutory minimum and because this information might cause a consumer to select a formula with higher levels of linoleic acid even though there is no added benefit from the higher levels. One comment specifically supported the declaration of linoleic acid.

Based on evidence received during hearings held in 1968, FDA concluded in the **Federal Register** of December 10, 1971 (36 FR 23553), that it is "reasonable and necessary" for physicians and consumers to be informed fully of the value of foods for special dietary use for infants by requiring that the labels of such foods bear information concerning the kinds and amounts of nutrients present. The continued need for this information was supported during the public hearing on the nutrient composition of infant formulas held March 12, 1980, and by comments

received in response to the proposed regulation. Moreover, no data were submitted in support of the position that such information is unnecessary.

Therefore, the agency reaffirms the conclusion that the nutrient information is necessary for fully informing health care professionals and consumers about the nutrient composition of infant formula so that they may deal effectively with problems that may present themselves in infant feeding. The agency is requiring the declaration of all required nutrients on infant formula labels, including linoleic acid, as proposed.

15. One comment suggested that a description of the value of the nutrients contained in infant formulas appear on the label, or if that was not possible, that the label list the essential nutrients that may be missing and state how they should be added to the diet.

The agency is not requiring a description of each nutrient's value on the label because the label is not the appropriate medium for discussion of the importance of nutrients in foods. This information, if needed, can be obtained from a nutrition text book. The agency is also not requiring the listing of missing nutrients on the label because the level of all nutrients recommended to be in infant formulas by the American Academy of Pediatrics is required to be present. Therefore, no change in this final rule has been made concerning describing a nutrient's value and declaring any missing nutrients.

16. Some comments suggested changing the units of measure of one or all nutrients. Recommendations for individual nutrients included changing the units for thiamine, riboflavin, niacin, vitamin B₆, pantothenic acid, and copper from micrograms to milligrams to be consistent with units specified in the U.S. Recommended Daily Allowance (U.S. RDA) as used in nutrition labeling of ordinary foods.

The agency is not making the suggested changes. The agency recognizes that its measurement system cannot be consistent with the measurement systems of all recognized nutritional authorities. However, the units of measure contained in the final rule are consistent with both the Committee on Nutrition/American Academy of Pediatrics and the Joint Food and Agriculture Organization/World Health Organization's Codex Alimentarius Commission recommendation, which express the levels of these nutrients in units of micrograms.

17. One comment suggested changing the unit of measure for niacin from micrograms to niacin equivalents.

This issue is being addressed in a separate rulemaking proceeding in which the agency proposed revising the unit of measure for niacin from micrograms to niacin equivalents (see 49 FR 14396; April 11, 1984). This comment will therefore be considered in that rulemaking proceeding.

18. Two comments suggested that alternative units for the label declaration for vitamins A, D and E not be provided. Both comments recommended a single standardized unit for easy product comparison.

The agency disagrees. The final rule allows voluntary declaration of vitamins A, D, and E in alternative units because many health care professionals use this nomenclature and calculations of levels of these nutrients in a diet are made easier when their concentrations are provided in these units. Furthermore, use of these alternative units is in addition to, not instead of, declaration of these nutrients in standard units, thereby giving the consumer a basis for easy product comparison. Therefore, § 107.10(b)(1) has not been changed to delete this provision.

19. One comment recommended declaring sodium, potassium, and chloride in units of millimoles or micromoles. Another comment suggested the use of milliequivalents.

The agency recognizes the usefulness to health professionals of information on sodium, potassium, and chloride in terms of millimoles, micromoles, or milliequivalents. Accordingly, the agency has revised § 107.10(b)(1) to provide for the voluntary label declaration of the level of these minerals in millimoles, micromoles, or milliequivalents parenthetically, immediately following the declaration in milligrams per 100 kilocalories.

20. Several comments responded to the agency's request for information from health care professionals and consumers on their ability to understand and use the required nutrient declarations when expressed on a per 100 kilocalorie basis. Some of these comments suggested that the use of a 100 kilocalorie basis was satisfactory as long as the label clearly indicates what volume is equivalent to 100 kilocalories. One comment recommended that the number of milliliters, as well as fluid ounces, supplying 100 kilocalories be declared. Other comments recommended caloric density declarations, i.e., specifying the number of kilocalories per liter or 100 milliliters. One comment recommended specifying the number of kilocalories per fluid ounce. One comment requested that the caloric value of protein, fat, and

carbohydrate be listed as kilocalories per 100 kilocalories. Other comments recommended listing amounts of nutrients or caloric concentration on a volume basis (such as per liter, per cup, per serving, or per can) as more meaningful to consumers.

To attempt to accommodate this diversity of opinion and still provide sufficient uniformity so that different products can be easily compared, the agency is requiring that nutrients be declared on a 100 kilocalorie basis and is allowing for additional bases or units of measurement to be declared voluntarily by the manufacturer as proposed. Therefore, no change was made in proposed § 107.10(a)(2).

The agency agrees with the comments suggesting that an alternative declaration of caloric density be permitted and proposed § 107.10(b)(3) has been revised to so provide. By allowing this flexibility, the agency believes the final rule will accommodate this diversity of opinion and also allow for future changes.

21. One comment objected to the wording in the proposed iron labeling requirement, but suggested that if such a statement was necessary, it appear on the information panel because the statement "Additional Iron May Be Necessary" is precautionary in nature. The comment suggested that a statement of identity such as "Low Iron" is more appropriate.

The agency believes that iron fortification is the one characteristic that distinguishes the two basic types of infant formulas. Therefore, the statement about iron content is considered to be part of the name of the infant formula and must appear on the principal display panel, rather than on the information panel.

"Additional Iron May Be Necessary" is only an example of the kind of statement that can be used to convey the message that the product is not iron fortified. The agency does not believe that it is necessary to revise § 107.10(b)(4)(ii) to include additional examples of the label statement to be made when an infant formula contains less than 1 milligram of iron per 100 kilocalories.

22. One comment stated that it understood that additional nutrients (other than those required by the Infant Formula Act) could be declared as long as they are listed at the bottom of the appropriate category.

The comment's understanding of the agency's position on declaration of additional nutrients is essentially correct. However, to avoid any inconsistencies in label declarations, the agency is adding § 107.10(b)(5) to

specify how these declarations are to be made. This section provides for the voluntary declaration of any additional nutrients at the bottom of the vitamin list if the nutrient is a vitamin, and between iodine and sodium if the nutrient is a mineral, provided that any additionally declared nutrient (1) has been identified as an essential dietary nutrient by the National Academy of Sciences (NAS) through its development of a recommended dietary allowance or an estimated safe and adequate daily dietary intake range, or has been identified as essential by FDA through publication in the *Federal Register* or establishment of a U.S. RDA, and (2) is provided at a level considered in these publications as having biological significance, when these levels are known.

Declaration of nutrients that are not required by the Infant Formula Act, not considered to be essential by the NAS or FDA, and not at levels considered to have biological significance is considered to be a misbranding violation under section 403(a)(1) of the act (21 U.S.C. 343(a)(1)), because including such nutrients in the nutrient table or declaring a nutrient at a level that may not have biological significance implies a level of significance or usefulness in human nutrition that has not been established.

23. Two comments recommended that the amount of fluoride in the formula be declared on the label.

FDA believes that consumers associate the declaration of nutrients in infant formulas with the dietary need for those nutrients and the presence of such nutrients at biologically significant levels. The agency recognizes that fluoride is an essential element in the development and formation of bones and teeth and, at appropriate levels, is a major factor in the prevention of dental caries. However, the agency has concluded that infant formula is not an appropriate vehicle in which to provide fluoride in an infant's diet and is therefore not requiring a minimum (biologically significant) level of fluoride to be added to infant formulas. FDA is also not requiring the declaration of fluoride on the label because a biologically significant level is not being required.

The basis for this decision is threefold. First, because of the wide variation of fluoride levels in public water sources, there is the possibility that infants could receive excessive fluoride in their diets if they were also to receive biologically significant levels of fluoride from infant formulas. This could lead to mottling of the infant's teeth. Second, because of the wide variation in

fluoride levels in public water sources, manufacturers have made it a common practice to limit the amount of fluoride in infant formulas. Third, it has become a common practice for physicians to prescribe fluoride supplements that may be adjusted according to the amounts of fluoride present in the water supply in their particular area.

24. One comment suggested that labels for iron fortified infant formula contain the warning statement that iron will cause stool darkening that is harmless to the infant.

The agency is not providing for this warning statement because stool darkening may be caused by components of the diet other than infant formula and can be an indication of a serious medical condition such as internal bleeding which may need medical attention.

Directions for Use

25. One comment stated that the infant formula label should designate the need for "pure drinking water." Another comment referred to the need for "potable" or "sterile" water.

The agency agrees that "potable" or "sterile" or "pure drinking water" must be used in preparing infant formula and advises that the directions for preparation and use already indicate this need by specifically directing consumers to the need for "sterilizing" water used in preparing the infant formula. Therefore, no changes are made in the final rule concerning the use of "potable," "sterile," or "pure drinking water."

26. Several comments supported requiring bilingual directions for the preparation and use of infant formulas. Some of these comments realized the space restrictions on a label and suggested that formula labels in Spanish be made available only to retailers with a high proportion of Spanish-speaking clientele. Others suggested following the labeling used by an infant formula manufacturer that uses the reverse side (inside) of the label for Spanish directions for use. One comment asserted that the argument against requiring bilingual labeling due to space limitations is not persuasive given that the infant formula companies already comply with Canadian laws mandating bilingual labeling.

As indicated in the preamble to the proposal, difficulties with a requirement for multilingual labeling include literacy in any language and space limitations on labels. The comment that the space limitation argument is invalid because bilingual labeling is already used in Canada does not take into account that

Canadian regulations do not include requirements for pictograms, symbols, or statements that are required by this final rule. The agency believes that providing labels in the Spanish language to those retailers with a high proportion of Spanish-reading clientele has been addressed by manufacturers by providing pamphlets in Spanish. Pamphlets in other languages have also been provided for retail establishments frequented by other non-English-reading clientele.

In addition, the agency advises that it cannot legally require bilingual or multilingual labeling on the reverse side (inside) of the label because section 403(f) of the act (21 U.S.C. 343(f)) deems a food to be misbranded if any word, statement, or other information required by or under its authority to appear on the label or labeling is not prominently placed, with such conspicuousness and in such terms, as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. The agency does not believe that labeling information placed on the reverse side (inside) of the label is prominently placed with such conspicuousness as to render it likely to be read under customary conditions of purchase and use. The agency also believes that the use of symbols and pictograms will adequately convey essential label information to consumers who cannot read English or perhaps any language. Therefore, the agency is not requiring bilingual or multilingual labeling in this final rule. However, the agency does not object to voluntary use of the reverse side (inside) of a label for multilingual labeling.

27. Several comments recommended mandatory label color coding to assist consumers, particularly those consumers who have difficulty reading English, to differentiate between the various types of infant formulas. One comment was opposed to color coding due to cost considerations. Another comment pointed out the problem of brand differentiation that could result if all formulas of a given type were the same color. One comment suggested colors for six types of formula. Another comment expressed concern about the possibility of one type of infant formula selling better because of an assigned color. Another comment suggested that regular infant formulas and infant formula for infants with special dietary needs could be distinguished by a color code. Two comments suggested that FDA study (using a contractor) the appropriate use of colors to distinguish types of formulas.

As indicated in the preamble to the proposal, food and other consumer product manufacturers routinely conduct proprietary research on the effectiveness of package designs. However, there is no satisfactory body of scientific or other empirical data from which the effectiveness of label color can be judged. No data were submitted in the comments to add insight to this problem. Because there is no single or consistent pattern for the use of colors within the infant formula industry, considerable consumer reeducation may be necessary before consumers would associate a single attribute with some of the colors now being used. Even if FDA determined a color scheme to be assigned to certain types of infant formula, this would not alleviate the problems associated with consumer reeducation. Also, manufacturers have reduced the potential for confusion that may have existed in the past between concentrated and ready-to-feed formulas by voluntarily standardizing can sizes used for these infant formulas. Liquid concentrated infant formulas are only being sold in 13- or 14-ounce cans and ready-to-feed formulas are sold in multiunit packages and 8- and 32-ounce cans. For these reasons, the agency has not included a color coding requirement in this final rule.

28. One comment suggested deleting the reference to maximum recommended storage temperature and replacing it with a general statement indicating that prolonged storage at excessive temperatures should be avoided. The comment asserts that improper temperature storage of unopened infant formula containers in the home has not been and is not now a problem.

The agency agrees that unopened infant formula containers are likely to withstand the various storage conditions in the home and these conditions are not likely to affect the nutrient levels of the product. To require a label statement that may suggest that homes be kept at 72° F (or some other proven safe temperature) may cause unwarranted concern and confusion. Therefore, FDA has revised § 107.20(a)(1) to require a statement indicating that prolonged storage at excessive temperatures should be avoided.

29. One comment suggested changing directions proposed in § 107.20(a)(4) for reconstituting infant formula powder from including the weight and volume of powdered formula to the weight or volume of powdered formula. One comment suggested the use of the two measures would complicate instructions,

and that fewer alternatives result in more effective and useful instructions.

The agency does not agree that the use of two measures (such as "one scoop (8 grams)") will complicate instructions. When larger amounts of infant formula are prepared (for example, a quart), it is easier and more accurate to weigh an amount of powdered formula than to measure several scoops of infant formula. Therefore, the final rule does not reflect the suggested change.

30. Several comments stated that the pictograms in the proposal were not adequate because they did not include such significant steps as sterilizing the utensils, cooling the formula, washing utensils, and refrigeration of unused formula. One comment expressed concern that the pictograms illustrated in the proposal would be misinterpreted. Two comments suggested, in lieu of the three-step pictogram used as an example, pictograms showing the emptying of the formula can into a container, filling the formula can with water, pouring the water into the container, stirring, and then pouring the mixture into a baby bottle. The comment indicated that this type of pictogram would reduce the possibility of over or under diluting. The comment also stated that the "1+1" indication in the three-step pictograms may not be clear to some individuals who are not familiar with such an algebraic concept.

The pictograms and symbols used in the proposal are examples. As in the proposal, the final rule requires pictograms but not particular pictograms. Manufacturers are free to use the pictograms they prefer. However, as discussed in the preamble to the proposal, infant formula manufacturers have conducted research on the comprehension of the three-step pictograms, used in the proposal, that illustrate the boiling, measuring, and mixing of water with a measured amount of concentrated or powdered infant formula. These studies showed that these three-step pictograms significantly increased the understanding of the major steps in the preparation of concentrated or powdered infant formulas. The agency is reluctant to use other pictograms as examples because it is not aware of studies showing the effectiveness of such other pictograms. Therefore, the pictograms included in the proposal as an example are being retained in the final rule. The agency agrees that clear, understandable pictograms should be used. However, the agency also urges that pictograms used in infant formula labeling be validated through studies

showing increased understanding by consumers illiterate in the English language and showing that the pictogram does not inadvertently promote confusion. When such increased understanding has been determined, the agency would support the introduction of new pictograms.

31. Two comments recommended that the pictogram not be required on the reverse side (inside) of a label as is being voluntarily provided by one manufacturer. Another comment thought that using the inside of the label was an excellent way of solving the label space problem.

As discussed under comment 26 above, the agency cannot legally require information on the reverse side (inside) of the label. However, the agency does not object to the voluntary use of the reverse side of a label for multilingual labeling, additional pictograms, or other nonmandatory information.

32. Several comments suggested providing only for a "use by" date and not an "expiration" date because it is more understandable. The comments also suggested that the "use by" date appear prominently on the lid of the containers and that it consist of a month and a year and not a specific day or date. One comment suggested a "sell by" date which would assist retail stores in in-store rotation of stock. One comment suggested that the language relating the "use by" date to stability testing be deleted because it is implicit and therefore unnecessary.

The agency agrees that a "use by" date placed prominently on the label would be most understandable to consumers. The agency also agrees that a "use by" date consisting of a month and a year is sufficient and the costs of expanding that requirement to include a specific day or date are not justified. FDA has revised § 107.20(c) accordingly.

The agency does not believe it is necessary to require the placement of a "use by" date on the lid of a container to assure that consumers know when the product is to be used. This information can be clearly conveyed to consumers by declaring the information prominently elsewhere on the container. With respect to a "sell by" date, this final rule has been developed to provide standardized labeling requirements to assist consumers and health professionals. Retail store employees can easily determine when to remove stock from store shelves based on a "use by" date. Also, the agency does not agree with the suggestion that the final rule be revised to delete the reference to stability testing for determining an appropriate "use by" date just because it is implicit.

33. Several comments suggested the addition of a "Do Not Add Water" symbol to the label of a ready-to-feed infant formula. One comment suggested that an X be placed over the "Add Water" symbol, while another suggested the international negative symbol of a slash, which also would be placed over the "Add Water" symbol.

The agency agrees that clear understandable symbols should be used as much as possible to augment written directions for use. As stated previously, the agency is reluctant to recommend pictograms or symbols when it is not aware of studies showing their effectiveness. The agency encourages manufacturers to develop new symbols and to validate these symbols through studies showing an increased understanding by consumers illiterate in the English language and showing that the symbols do not inadvertently promote confusion. Therefore, the agency has continued to include the symbols used in the proposal because it is not aware of any studies to verify the effectiveness of any new symbols. When such studies have been conducted showing increased understanding by consumers illiterate in the English language, the agency would support the introduction of new symbols.

34. Several comments stated that infant formula should contain a statement on the label indicating that breastfeeding is recommended by physicians and is the most healthful form of nourishment for infants. The comments indicated that low income families need, for reasons of economics and sanitation, the benefits of breastfeeding more than any other sector of the population yet have the lowest percentage of breastfed infants. In addition, the comments pointed out that many infants are both breastfed and formula-fed and a statement on the superiority of breastfeeding on the label of a can is relevant to these mothers. The comments also argued that such a label statement may provide the encouragement a mother needs to continue to breastfeed and may influence her choice of feeding with her next child. Also, comments stated that persons who have not had children may be influenced by a breastfeeding recommendation on an infant formula container. In addition, comments stated that many women receive their first container of infant formula in the hospital before they have fully decided on a method of feeding and that these women deserve to know that breastfeeding is the preferred method of feeding infants.

Some manufacturers have voluntarily included on their labels statements encouraging breastfeeding, and the

agency encourages such statements when manufacturers believe it is appropriate. However, there are no studies or data regarding the usefulness or the effectiveness of labeling statements that describe the benefits of breastfeeding in affecting the decision of the mother to breastfeed her child or encouraging the practice of breastfeeding. In addition, requiring a statement encouraging breastfeeding may cause mothers who have decided not to breastfeed their infants to feel guilty or inferior because of their decision. There are many valid reasons for mothers to decide not to nurse their infants or to decide to stop nursing their infants. For these reasons, in this final rule the agency is not including the requirement for a statement encouraging breastfeeding.

35. Several comments stated that every consumer should be told of the potential consequences of not using or preparing the infant formula properly. One comment explained that almost all consumer products come with directions but, if ignoring the directions may result in an infant's illness, then the mother should be informed of these consequences. The comment went on to explain that frequently the decision to over dilute a formula is the result of poverty and the need to stretch the family budget, and that the incentive to over dilute would be reduced if the mother was made aware of its potential consequences.

The agency agrees that mothers may not realize the consequences of improper preparation of infant formula. The agency also agrees that if more mothers understood these consequences, improper preparation, such as deliberate over dilution, could be reduced. Therefore, the agency has added in § 107.20(e) the requirement for a statement beneath or in close proximity to the "Directions For Preparation and Use" that identifies the risk of improper preparation or use of an infant formula, such as "THE HEALTH OF YOUR INFANT DEPENDS ON CAREFULLY FOLLOWING THE DIRECTIONS FOR PREPARATION AND USE".

36. One comment suggested a statement indicating that parents should consult with their pediatricians before using infant formulas. Another comment suggested the label statement "USE UNDER THE SUPERVISION OF MEDICAL PERSONNEL".

The agency agrees with the thrust of these suggestions and has added § 107.20(f) to include a statement indicating that parents should consult their physicians on the use of infant

formulas, such as "USE AS DIRECTED BY A PHYSICIAN". Current labeling practices include label statements such as "USE AS INSTRUCTED BY YOUR PHYSICIAN" or "USE AS DIRECTED BY A PHYSICIAN".

37. A few comments recommended label statements or pictograms concerning instructions on how to feed infants. Recommended instructions included "hold your baby while bottle feeding" and "do not prop your baby's bottle." These statements were suggested as warning statements designed to prevent bottle mouth syndrome (nursing bottle syndrome). This situation exists when babies fall asleep with a pool of sweetened liquid in their mouths. The liquid then remains in contact with the teeth when salivary flow is minimal and leads to dental caries.

FDA does not believe it is appropriate to require label instructions on how to feed infants because nursing bottle syndrome can occur as the result of feeding infants any sweetened liquid by bottle at bedtime. It is therefore a broader issue that should be explained to parents by health care providers so the parents will understand the reason for the instruction and apply it whenever bottle feeding their infants at bedtime.

Exemption for Individual Containers

38. One comment requested that FDA permit, for single feeding (ready-to-feed) containers, the declaration of the required labeling information on the outer container of the multiunit package and allow reduced labeling information on the individual container within a multiunit package because of a lack of space on the individual container.

FDA agrees that, for ready-to-feed infant formulas, it is not necessary to require complete label information on each individual container within a multiunit package; only more essential information necessary at the time of preparation and use needs to appear on the individual container labels.

Accordingly, the agency has determined that the following labeling information need not be on the individual containers, provided that all required information is on the outer label of the multiunit package: (1) Name and place of business of the manufacturer, packer, or distributor; (2) ingredients listing; (3) nutrients listing; and (4) some directions for preparation and use.

The label declaration "With Iron" or "Additional Iron May Be Necessary" or similar statement must be present on the principal display panel of each individual container because iron fortification is the one characteristic

that distinguishes the two basic types of ready-to-feed infant formulas and is therefore considered to be part of the name of the formula. Likewise, with respect to the "Directions For Preparation and Use" requirements, the label declaration "Shake Well Before Opening" and the directions for washing and sterilizing baby bottle nipples (when necessary) also must be present on each individual container because both are essential aspects of preparing ready-to-feed infant formulas for use. Therefore, the agency has added § 107.30 to allow for these exemptions.

As a safeguard to protect consumers, a proviso to § 107.30 provides that these exemptions only apply when (1) the multiunit package meets all the requirements of Part 107; (2) individual containers are securely enclosed within and are not intended to be separated from the retail package under conditions of retail sale; and (3) the label on each individual container includes the statement "This Unit Not Intended for Individual Sale" in a type size not less than one-sixteenth inch in height. The word "Retail" may be used in lieu of or immediately following the word "Individual" in the statement.

Public Hearings

39. Several comments requested public hearings on the proposed rule prior to its finalization. These comments stated that hearings would be useful because the infant formula industry has begun to institute several new policies on pictograms and bilingual labeling. The comments suggested that public hearings should be held in areas with a high concentration of low income families of various ethnic backgrounds in order to examine the effectiveness of the various forms of pictograms, symbols, and bilingual labels. The comments stated that this would help the agency to determine which form of labeling is most effective.

As indicated in the preamble to the proposal, the agency held a public meeting and an informal public hearing in February and March 1980 that considered a number of issues concerning infant formulas including pictograms, symbols, bilingual labeling, and other labeling issues.

The agency concludes that another hearing would not serve a useful purpose. The requests for hearings did not provide any information to justify a hearing, and the agency is not aware of any new survey or scientific information upon which to base another hearing.

FDA has made several minor corrections in the final rule that are editorial in nature.

Economic Considerations

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354), the economic impacts of the final rule have been analyzed. The one-time cost of changing infant formula labels estimated in the preamble to the proposal was \$50,000. This final rule makes slight modifications in the statements required on the new labels. Consequently, the estimated cost remains the same. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities and that the rule is not a major rule as defined by Executive Order 12291.

Environmental Considerations

The agency has determined pursuant to 21 CFR 25.24(d)(13) (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.

Sections 107.10 (a) and (b)(2) and 107.20 (a) and (c) of this final rule contain collection of information requirements that were submitted, as proposed, to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. These requirements were approved and assigned OMB control number 0910-0159. These sections, as revised in the final rule, and new § 107.30 do not substantively change the information collection requirements.

List of Subjects

21 CFR Part 105

Dietary foods, Food labeling, Infant foods, Nutrition, Vitamins and minerals.

21 CFR Part 107

Food labeling, Infant formula, Nutrient information.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201 (n) and (aa), 403 (a) and (j), 412, 701 (a) and (e), 52 Stat. 1041 as amended, 1047 as amended, 1048, 1055, 70 Stat. 919 as amended, 94 Stat. 1190 (21 U.S.C. 321 (n) and (aa), 343 (a) and (j), 350a, 371 (a) and (e)) and under 21 CFR Part 5.11, Parts 105 and 107 are amended as follows:

PART 105—FOODS FOR SPECIAL DIETARY USE

§ 105.65 [Amended]

1. Part 105 is amended in § 105.65 *Infant foods* by removing paragraphs (c), (d), and (e).
2. By adding new Part 107, to read as follows:

PART 107—INFANT FORMULA

Subpart A—[Reserved]

Subpart B—Labeling

- Sec.
107.10 Nutrient information.
107.20 Directions for use.
107.30 Exemptions.

Authority: Secs. 201(n) and (aa), 403(a) and (j), 412, 701(a) and (e), 52 Stat. 1041 as amended, 1047 as amended, 1048, 1055, 70 Stat. 919 as amended, 94 Stat. 1190 (21 U.S.C. 321(n) and (aa), 343(a) and (j), 350a, 371(a) and (e)).

Subpart A—[Reserved]

Subpart B—Labeling

§ 107.10 Nutrient Information.

(a) The labeling of infant formulas, as defined in section 201(aa) of the Federal Food, Drug, and Cosmetic Act, shall bear in the order given, in the units specified, and in tabular format, the following information regarding the product as prepared in accordance with label directions for infant consumption:

(1) A statement of the number of fluid ounces supplying 100 kilocalories (in case of food label statements, a kilocalorie is represented by the word "Calorie"); and

(2) A statement of the amount of each of the following nutrients supplied by 100 kilocalories:

Nutrients	Unit of measurement
Protein	Grams.
Fat	Do.
Carbohydrate	Do.
Water	Do.
Linoleic acid	Milligrams.
Vitamins:	
Vitamin A	International units.
Vitamin D	Do.
Vitamin E	Do.
Vitamin K	Micrograms.
Thiamine (Vitamin B ₁)	Do.
Riboflavin (Vitamin B ₂)	Do.
Vitamin B ₆	Do.
Vitamin B ₁₂	Do.
Niacin	Do.
Folic acid (Folacin)	Do.
Pantothenic acid	Do.
Biotin	Do.
Vitamin C (Ascorbic acid)	Milligrams.
Choline	Do.
Inositol	Do.
Minerals:	
Calcium	Milligrams.
Phosphorus	Do.
Magnesium	Do.
Iron	Do.
Zinc	Do.
Manganese	Micrograms.
Copper	Do.

Nutrients	Unit of measurement
Iodine	Do.
Sodium	Milligrams.
Potassium	Do.
Chloride	Do.

(b) In addition the following apply:

(1) Vitamin A content may also be declared on the label in units of microgram retinol equivalents, vitamin D content in units of micrograms cholecalciferol, vitamin E content in units of milligram alpha-tocopherol equivalents, and sodium, potassium, and chloride content in units of millimoles, micromoles, or milliequivalents. When these declarations are made they shall appear in parentheses immediately following the declarations in International Units for vitamins A, D, and E, and immediately following the declarations in milligrams for sodium, potassium, and chloride.

(2) Biotin, choline, and inositol content shall be declared except when they are not added to milk-based infant formulas.

(3) Each of the listed nutrients, and the caloric density, may also be declared on the label on other bases, such as per 100 milliliters or per liter, as prepared for infant consumption.

(4) One of the following statements shall appear on the principal display panel, as appropriate:

(i) The statement "Infant Formula With Iron", or a similar statement, if the product contains 1 milligram or more of iron in a quantity of product that supplies 100 kilocalories when prepared in accordance with label directions for infant consumption.

(ii) The statement "Additional Iron May Be Necessary", or a similar statement, if the product contains less than 1 milligram of iron in a quantity of product that supplies 100 kilocalories when prepared in accordance with label directions for infant consumption.

(5) Any additional vitamin may be declared at the bottom of the vitamin list and any additional minerals may be declared between iodine and sodium, provided that any additionally declared nutrient (*) has been identified as essential by the National Academy of Sciences through its development of a recommended dietary allowance or an estimated safe and adequate daily dietary intake range, or has been identified as essential by the Food and Drug Administration through a Federal Register publication or establishment of a U.S. Recommended Daily Allowance, and (ii) is provided at a level considered in these publications as having biological significance, when these levels are known.

(Collection of information requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0159)

§ 107.20 Directions for use.

In addition to the applicable labeling requirements in Parts 101 and 105 of this chapter, the product label shall bear:

(a) Under the heading "Directions For Preparation and Use", directions for:

(1) Storage of infant formula before and after the container has been opened, including a statement indicating that prolonged storage at excessive temperatures should be avoided;

(2) Agitating liquid infant formula before opening the container, such as "Shake Well Before Opening";

(3) "Sterilization" of water, bottle, and nipples when necessary for preparing infant formula for use;

(4) Dilution of infant formula, when appropriate. Directions for powdered infant formula shall contain the weight and volume of powdered formula to be reconstituted.

(b) In close proximity to the "Directions for Preparation and Use" a pictogram depicting the major steps for preparation of that infant formula, such as (for a concentrated formula):

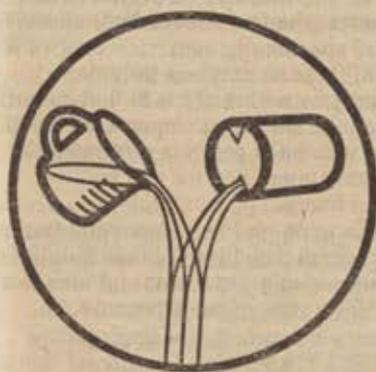
Sterilization is recommended
Your physician will decide if it
is not required



(c) A "Use by _____" date, the blank to be filled in with the month and year selected by the manufacturer, packer, or distributor of the infant formula on the basis of tests or other

information showing that the infant formula, until that date, under the conditions of handling, storage, preparation, and use prescribed by label directions, will: (1) when consumed, contain not less than the quantity of each nutrient, as set forth on its label; and (2) otherwise be of an acceptable quality (e.g., pass through an ordinary bottle nipple).

(d) The statement "Add Water" or "Do Not Add Water", as appropriate, to appear on the principal display panel of concentrated or ready-to-feed infant formulas. In close proximity to the statement "Add Water", a symbol such as



if the addition of water is necessary. The symbol shall be placed on a white background encircled by a dark border.

(e) A warning statement beneath or in close proximity to the "Directions For Preparation and Use" that cautions against improper preparation or use of an infant formula, such as "THE HEALTH OF YOUR INFANT DEPENDS ON CAREFULLY FOLLOWING THE DIRECTIONS FOR PREPARATION AND USE".

(f) A statement indicating that parents should consult their physicians about the use of infant formulas, such as "USE AS DIRECTED BY A PHYSICIAN".

(Collection of information requirements were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0159)

§ 107.30 Exemptions.

When containers of ready-to-feed infant formula, to be sold at the retail level, are contained within a multiunit package, the labels of the individual containers shall contain all of the label information required by section 403 of the Federal Food, Drug, and Cosmetic Act (the act), §§ 107.10 and 107.20, and all appropriate sections of Part 101 of this chapter, except that the labels of the individual containers contained within

the outer package shall be exempt from compliance with the requirements of section 403 (e)(1) and (i)(2) of the act; and §§ 107.10 (a) and (b)(2) and 107.20 (b), (e), and (f), provided that (a) the multiunit package meets all the requirements of this part; (b) individual containers are securely enclosed within and are not intended to be separated from the retail package under conditions of retail sale; and (c) the label on each individual container includes the statement "This Unit Not Intended For Individual Sale" in type size not less than one-sixteenth inch in height. The word "Retail" may be used in lieu of or immediately following the word "Individual" in the statement.

Any person who will be adversely affected by the foregoing regulations may at any time on or before February 13, 1985, submit to the Dockets Management Branch (address above) written objections pertaining to §§ 105.65 (c), (d), and (e) and 107.10 and may make a written request for a public hearing on the stated objections. Objections and requests for hearing concerning other sections of the foregoing regulations should not be submitted, as the objections will have no legal effect and a hearing will not be granted. This subject was discussed in detail in the preamble to the proposal.

Each objection shall be separately numbered and each numbered objection shall specify with particularity the provisions of the regulations to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, all affected products initially introduced or initially delivered for introduction into interstate commerce on or after January 14, 1986 shall fully comply. Notice of the filing of

objections or lack thereof will be published in the **Federal Register**.

(Secs. 201 (n) and (aa), 403 (a) and (j), 412, 701 (a) and (e), 52 Stat. 1041 as amended, 1047 as amended, 1048, 1055, 70 Stat. 919 as amended, 94 Stat. 1190 (21 U.S.C. 321 (n) and (aa), 343 (a) and (j), 350a, 371 (a) and (e)).

Dated: December 6, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-957 Filed 11-11-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 84F-0301]

Indirect Food Additives; Polymers

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

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyoxymethylene copolymers with a minimum number average molecular weight of 15,000 rather than the 20,000 as currently listed. This action responds to a petition filed by Celanese Engineering Resins.

DATES: Effective January 14, 1985, objections by February 13, 1985.

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

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of September 26, 1984 (49 FR 37851), FDA announced that a petition (FAP 4B3784) had been filed by Celanese Engineering Resins proposing that the food additive regulations be changed to provide for the safe use of polyoxymethylene copolymers with a minimum number average molecular weight of 15,000 for the copolymer rather than the 20,000 as presently listed.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the

petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this regulation as announced in the notice of filing published in the *Federal Register*. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 177

Food additives: Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 177 is amended in § 177.2470 by revising the first sentence of paragraph (c)(2), to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.2470 Polyoxymethylene copolymer.

(c)

(2) Minimum number average molecular weight of the copolymer is 15,000 as determined by a method titled "Number Average Molecular Weight," which is incorporated by reference.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 13, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which object is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall

include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 14, 1985.

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

Dated: January 3, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-960 Filed 1-11-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 83F-0289]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]-methane as an antioxidant/stabilizer in food-contact articles. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective January 14, 1985; objections by February 13, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of September 21, 1983 (48 FR 43095), FDA announced that a food additive petition (FAP 3B3737) had been filed by Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 177.2600 *Rubber articles intended for repeated use* [21 CFR 177.2600] and § 178.2010

Antioxidants and stabilizers for polymers (21 CFR 178.2010) be amended to provide for the safe use of [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane as an antioxidant/stabilizer in food-contact articles.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

The petitioner requested that the existing regulation permitting the use of this additive be amended to transfer the limitation now appearing in entry 3 in the list of limitations for the use of tetrakis in isobutylene polymers that contact nonalcoholic foods to a new entry specifically authorizing use of the additive in isobutylene polymers complying with § 177.1420 that contact alcoholic foods (maximum use level 0.1 percent). The agency is modifying the existing regulation for this additive accordingly.

The petitioner had also requested that the additive be listed for use in rubber articles under § 177.2600 and also as a separate item under § 178.2010. The agency believes that a single listing under § 178.2010 is adequate for this use of the additive, and in the interest of avoiding redundancy in the regulation, is not listing the additive under § 177.2600.

In accordance with § 177.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended in § 178.2010(b) by amending the entry for "Tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]-methane" by revising entry 3 and adding two new entries to the list of limitations for the substance to read as follows:

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

§ 178.2010 Antioxidants and/or stabilizers for polymers.

(b) * * *

Substances	Limitations
Tetrakis[methylene(3,5-di- <i>tert</i> -butyl-4-hydroxyhydrocinnamate)]methane (CAS Reg. No. 5683-19-8).	<p>For use only.</p> <p>3. At levels not to exceed 0.5 percent by weight of the following polymers when used in articles that contact nonalcoholic food: Polystyrene and rubber-modified polystyrene complying with § 177.1640 of this chapter; ethylene-acrylic acid copolymers complying with § 177.1310 of this chapter; ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter; ethylene-methacrylic acid copolymers, ethylene-methacrylic acid-vinyl acetate copolymers and their partial salts complying with § 177.1330 of this chapter; and styrene butadiene copolymers used in compliance with regulations in Parts 174, 175, 176, 177, 178, and § 179.45 of this chapter.</p> <p>7. At levels not to exceed 0.5 percent by weight of isobutylene polymers complying with § 177.1420 of this chapter, except that when such polymers are used in articles that contact alcoholic food, the use level shall not exceed 0.1 percent by weight.</p> <p>8. In rubber articles intended for repeated use complying with § 177.2600 of this chapter, at levels not exceeding 0.5 percent by weight of the finished rubber product.</p>

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 13, 1985, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on

the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objection may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective January 14, 1985.

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

Dated: January 3, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-961 Filed 1-11-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol Acetate With Monensin

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

SUMMARY: The Food and Drug Administration (FDA) is clarifying a regulation reflecting approval of the Upjohn Co.'s new animal drug applications (NADA's) providing for use in heifers of melengestrol acetate combined with monensin feeds. This document amends the regulation to eliminate a misinterpretation concerning administration of the combination.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION. In the Federal Register of October 11, 1984 (49 FR 39842), FDA published regulations reflecting approval of Upjohn's NADA's 124-309 and 125-476. The NADA's

provide for administering a melengestrol acetate/monensin combination by top-dressing dry or liquid supplements containing 0.125 to 0.8 milligram of melengestrol acetate per pound on complete feed containing 5 to 30 grams of monensin per ton. The complete feed is indicated for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers fed in confinement for slaughter. Certain wording in the preamble and in the amendment to 21 CFR 558.355 of the October 11, 1984 Federal Register document have resulted in the misinterpretation that a melengestrol acetate supplement can also be combined with a monensin supplement and directly fed to heifers. This document revises the regulation by removing the phrase causing the misinterpretation (i.e., " * * * or with monensin supplements containing 50 to 1,200 grams per ton"). Additionally, 21 CFR 558.342 is amended by adding "Indications for use" and "Limitations" paragraphs for the melengestrol acetate/monensin combination.

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 Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. In § 558.342 by revising paragraph (e)(1)(ii) and by adding paragraph (e)(2)(i) and (ii), to read as follows:

§ 558.342 Melengestrol acetate.

(e) * * *

(1) * * *

(ii) *Limitations.* Heifers being fed for slaughter; administer in feed supplement; withdraw 48 hours prior to slaughter.

(2) * * *

(i) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).

(ii) *Limitations.* Heifers being fed in confinement for slaughter; administer in feed supplement; withdraw 48 hours prior to slaughter.

2. In § 558.355 by revising paragraph (f)(3)(iv)(b), to read as follows:

§ 558.355 Monensin.

- (f) * * *
- (3) * * *
- (iv) * * *

(b) *Limitations.* Heifers being fed in confinement for slaughter. Administer melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to complete feeds containing monensin at 5 to 30 grams per ton of feed. Administer monensin in accordance with paragraph (f)(3)(i)(b) of this section. Withdraw melengestrol acetate 48 hours prior to slaughter.

Effective date. January 14, 1985.

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

Dated: January 4, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-959 Filed 1-11-85; 8:45 am]

BILLING CODE 4160-01-M

PEACE CORPS

22 CFR Part 308

Compliance With Privacy Act of 1974

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: This action establishes Peace Corps' policy and procedures to assure protection of individual privacy and the accuracy and security of records in accordance with the requirements of the Privacy Act. The regulations include provisions for individual access to, correction and/or amendment of such records and the disclosure of information from such records, exemptions from disclosure, exceptions to regulations against disclosure, and standards of conduct for persons in control of records systems.

EFFECTIVE DATE: January 29, 1985.

FOR FURTHER INFORMATION CONTACT:

John von Reyn, Privacy Act Officer, Office of Administrative Services, 202-254-6020, or Robert Martin, Associate General Counsel, 202-254-7966 or Desk Officer Francine Picoult, Office of Management and Budget, Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION: On August 27, 1984 the Director of the Peace Corps issued a notice in the Federal Register, Volume 49 at pages 33896 through 33901, that the Peace Corps proposed to amend the Code of Federal Regulations by adding a new Part 308 which implements the provisions of Sections 2 and 3 of the Privacy Act of 1974 (Pub. L. 93-579) (hereinafter

referred to as the "Act"). No comments were received during the sixty day comment period. As a result of further review within the Agency, one change was made to the regulations. Pursuant to 5 U.S.C. 552a (k), paragraphs have been added to section 308-14 of the regulations. These paragraphs explain the reasons and authority for exempting information contained in the systems of records listed from certain provisions of the Act.

Executive Order 12291

The Peace Corps has determined that this rule is not a major rule for the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of \$100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The Director certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 308

Privacy; Administrative Practice and Procedure; Information.

Accordingly, Title 22, Code of Federal Regulations, is amended by adding Part 308 to read as follows:

PART 308—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

- Sec.
- 308.1 Purpose.
- 308.2 Policy.
- 308.3 Definitions.
- 308.4 Disclosure of Records.
- 308.5 New uses of information.
- 308.6 Reports regarding changes in systems.
- 308.7 Use of social security account number in records system [Reserved].
- 308.8 Rules of conduct.
- 308.9 Records systems—management and control.
- 308.10 Security of records systems—manual and automated.
- 308.11 Accounting for disclosure of records.
- 308.12 Contents of records systems.
- 308.13 Access to records.
- 308.14 Specific exemptions.
- 308.15 Identification of requesters.
- 308.16 Amendment of records and appeals with respect thereto.
- 308.17 Denial of access and appeals with respect thereto.
- 308.18 Fees.
- Authority: 5 U.S.C. 552a.

§ 308.1 Purpose.

The purpose of this part is to set forth the basic policies of the Peace Corps governing the maintenance of systems of records containing personal information as defined in the Privacy Act of 1974 (5 U.S.C. 552a). Records included in this

part are those described in the aforesaid Act and maintained by the Peace Corps and/or any component thereof.

§ 308.2 Policy.

It is the policy of the Peace Corps to protect, preserve and defend the right of privacy of any individual as to whom the agency maintains personal information in any records system and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. It is further the policy of the agency to maintain its records in such a fashion that the information contained therein is and remains material and relevant to the purposes for which it is collected in order to maintain its records with fairness to the individuals who are the subject of such records.

§ 308.3 Definitions.

(a) "Record" means any document, collection, or grouping of information about an individual maintained by the agency, including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or personal identification number, symbol, photograph, or other identifying particular assigned to such individual, such as a finger or voiceprint.

(b) "System of Records" means a group of any records under the control of the agency from which information is retrieved by use of the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(c) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term "agency" means the Peace Corps or any component thereof.

(e) The term "individual" means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term "maintain" includes the maintenance, collection, use or dissemination of any record.

(g) The term "Act" means the Privacy Act of 1974 (5 U.S.C. 552a) as amended from time to time.

§ 308.4 Disclosure of records.

The agency will not disclose any personal information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to another agency,

without the express written consent of the individual to whom the record pertains, or his or her agent or attorney, except in the following instances:

(a) To officers or employees of the Peace Corps having a need for such record in the official performance of their duties.

(b) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552).

(c) For routine uses as published in the **Federal Register**.

(d) To the Bureau of the Census for uses pursuant to Title 13.

(e) To an individual or agency having a proper need for such record for statistical research provided that such record is transmitted in a form which is not individually identifiable and that an appropriate written statement is obtained from the person to whom the record is transmitted stating the purpose for the request and a certification under oath that the records will be used only for statistical purposes.

(f) To the National Archives of the United States as a record of historical value under rules and regulations of the Archives or to the Administrator of General Services or his designee to determine if it has such value.

(g) To an agency or instrumentality of any governmental jurisdiction within the control of the United States for civil or criminal law enforcement activities, if the activity is authorized by law, and the head of any such agency or instrumentality has made a written request for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the agency to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected: *Provided*, That such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(h) In emergency situations upon a showing of compelling circumstances affecting the health or safety of any individual provided that after such disclosure, notification of such disclosure must be promptly sent to the last known address of the individual to whom the record pertains.

(i) To either House of Congress or to a subcommittee or committee (joint or either house) to the extent the subject matter falls within their jurisdiction.

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to an order by the presiding judge of a court of competent jurisdiction. If any record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the agency must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

(l) To consumer reporting agencies as defined in 31 U.S.C. 3701(a)(3) in accordance with 31 U.S.C. 3711, and under contracts for collection services as authorized in 31 U.S.C. 3718.

§ 308.5 New uses of information.

The agency shall publish in the **Federal Register** a notice of its intention to establish a new or revised routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the new or revised routine use is to be established.

(b) The authority for maintaining the system of records.

(c) The categories of records maintained in the system.

(d) The purpose for which the record is to be maintained.

(e) The proposed routine use(s).

(f) The purpose of the routine use(s).

(g) The categories of recipients of such use.

In the event of any request for an addition to the routine uses of the systems which the agency maintains, such request may be sent to the following officer: Director, Office of Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

§ 308.6 Reports regarding changes in systems.

The agency shall provide to Congress and the Office of Management and Budget advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accord with guidelines provided by the Office of Management and Budget.

§ 308.7 Use of social security account number in records systems. [Reserved]

§ 308.8 Rules of conduct.

(a) The Head of the agency shall assure that all persons involved in the design, development, operation or maintenance of any systems of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the

criminal penalties provided under the Act, and the fact the agency may be subject to civil suit for failure to comply with the provisions of the Privacy Act and these regulations.

(b) The Head of the agency shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

§ 308.9 Records systems—management and control.

(a) The Director, Office of Administrative Services, shall have overall control and supervision of the security of all records keeping systems and shall be responsible for monitoring the security standards set forth in these regulations.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the agency and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers wherever not in use or in the direct control of authorized personnel.

§ 308.10 Security of records systems—manual and automated.

The Head of the agency has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained including all reports and outputs from such systems which contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data and must furthermore minimize the extent technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in records systems as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or without the agency.

(2) All records systems when not under the personal control of the employees authorized to use same must be stored in an appropriate metal filing cabinet. Where appropriate, such cabinet shall have a three position dial-type combination lock, and/or be equipped with a steel lock bar secured by a GSA approved changeable combination padlock or in some such other securely locked cabinet as may be approved by GSA for the storage of such records. Certain systems are not of such confidential nature that their disclosure would harm an individual who is the subject of such record. Records in this category shall be maintained in steel cabinets without the necessity of combination locks.

(3) Access to and use of systems of records shall be permitted only to persons whose official duties require such access within the agency, for routine use as defined in § 308.4 and in the Peace Corps' published systems of records notices, or for such other uses as may be provided herein.

(4) Other than for access within the agency to persons needing such records in the performance of their official duties or routine uses as defined herein and in the Peace Corps' systems of records notices or such other uses as provided herein, access to records within systems of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to a designated personal representative.

(5) Access to areas where records systems are stored will be limited to those persons whose official duties require work in such areas and proper accounting of removal of any records from storage areas shall be maintained at all times in the form directed by the Director, Administrative Services.

(6) The agency shall assure that all persons whose official duties require access to and use of records contained in records systems are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within records systems shall be in accord with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automatic data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data contained in punch cards, magnetic tapes or discs are not under the personal control of an authorized person such information must be stored in a metal filing cabinet having a built-in three

position combination lock, a metal filing cabinet equipped with a steel lock, a metal filing cabinet equipped with a steel lock bar secured with a General Services Administration (GSA) approved combination padlock, or in adequate containers or in a secured room or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose official duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be carried on by shredding, burning or in the case of tapes or discs, degaussing, in accord with any regulations now or hereafter proposed by the GSA or other appropriate authority.

§ 308.11 Accounting for disclosure of records.

Each office maintaining a system of records shall keep a written account of routine disclosures (see paragraphs (a) through (e) of this section) for all records within such system in the form prescribed by the Director, Office of Administrative Services. Disclosure made to employees of the agency in the normal course of their official duties or pursuant to the provisions of the Freedom of Information Act need not be accounted for. Such written account shall contain the following:

(a) The date, nature, and purpose of each disclosure of a record to any person or to another agency.

(b) The name and address of the person or agency to whom the disclosure was made.

(c) Sufficient information to permit the construction of a listing of all disclosures at appropriate periodic intervals.

(d) The justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the provisions of subsection (b) of the Act.

(e) For the purpose of this part, the system of accounting for disclosure is

not a system of records under the definitions hereof and no accounting need be maintained for the disclosure of accounting of disclosures.

§ 308.12 Contents of records systems.

(a) The agency shall maintain in any records contained in any records system hereunder only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which the agency acquired the information as authorized by statute or Executive Order.

(b) In situations in which the information may result in adverse determinations about such individual's rights, benefits and privileges under any Federal program, all information placed in records systems shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(c) Each form or other document which an individual is expected to complete in order to provide information for any records system shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 308.7 of this regulation.

(4) The effect on the individual, if any, of not providing all or part of the required or requested information.

(d) Records maintained in any system of records used by the agency to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual: *Provided however*, that the agency shall not be required to update or keep current retired records.

(e) Before disseminating any record about an individual to any person other than an agency as defined in 5 U.S.C. 552(e) or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), the agency shall make reasonable efforts to assure that such records are accurate, complete, timely and relevant for agency purposes.

(f) Under no circumstances shall the agency maintain any record about an individual with respect to or describing how such individual exercises rights guaranteed by the first amendment of the Constitution of the United States unless expressly authorized by statute

or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(g) In the event any record is disclosed as a result of the order of a presiding judge of a court of competent jurisdiction, the agency shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

§ 308.13 Access to records

(a) The Director, Administrative Services, shall keep a current list of systems of records maintained by the agency and published in accordance with the provisions of these regulations.

(b) Individuals requesting access to any record the agency maintains about him or her in a system of records shall be provided access to such records. Such requests shall be submitted in writing by mail, or in person during regular business hours, to the System Managers identified in the specific system notices. Systems maintained at overseas and domestic field offices may be addressed to the Country Director or Regional Service Center Manager. If assistance is needed, the Director, Office of Administrative Services, will provide agency addresses.

(c) Requests for records from more than one system of records shall be directed to the Director, Office of Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

(d) Requests for access to or copies of records should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required. If the individual wishes access to specific documents the request should identify or describe as nearly as possible such documents.

(e) A record may be disclosed to a representative of the person to whom a record relates who is authorized in writing to have access to the record by the person to whom it relates.

(f) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Peace Corps. Mailed or personal request for documents in storage which must be compiled from more than one location, or which are otherwise not immediately available, will be acknowledge within ten working days, and the records requested will be provided as promptly thereafter as possible.

(g) Medical or psychological records shall be disclosed to an individual unless in the judgment of the agency,

access to such records might have an adverse effect upon such individual. When such determination has been made, the agency may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his or her professional judgment.

§ 308.14 Specific exemptions.

Records or portions of records in certain record systems specified below shall be exempt from disclosure: *Provided, however*, That no such exemption shall apply to the provisions of § 308.12(a) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 308.12(b) (collecting information directly from the individual to whom it pertains); § 308.12(c) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 308.12(g) (notifying the subjects of records disclosed under compulsory court process); § 308.16(d)(3) hereof (informing prior recipient of corrected or disputed records); § 308.16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

(a) Material in any system of records considered classified and exempt from disclosure under provisions of section 552(b)(1) of the Freedom of Information Act. Agency systems of records now containing such material are: Legal Files—Staff, Volunteers and Applicants; Security Records Peace Corps Staff/Volunteers and ACTION staff.

(1) Authority: 5 USC 552a (k)(1)

(2) Reasons: To protect information classified in the interest of national defense or foreign policy.

(b) Investigatory material compiled for the purposes of law enforcement:

Provided however, That if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent necessary to protect the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence, or prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of the identity of such source. Agency systems of records containing such

investigatory material are: Discrimination Complaint Files; Employee Occupational Injury and Illness Reports; Legal Files—Staff, Volunteers and Applicants; Security Records—Peace Corps Staff/Volunteers and ACTION Staff.

(1) Authority: 5 USC 552a(k)(2)

(2) Reasons: To protect the identity of sources to whom proper promises of confidentiality have been made during investigations. Without these promises, sources will often be unwilling to provide information essential in adjudicating access in a fair and impartial manner.

(c) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualification for service as an employee or volunteer or for the obtaining of a Federal contract or for access to classified information: *Provided, however*, That such material shall be disclosed to the extent possible without revealing the identity of a source who furnished information to the government under an express promise of the confidentiality of his or her identity or, prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of identity. Agency systems of records containing such material are: Contractors and Consultant Files; Discrimination Complaint Files; Legal Files—Staff, Volunteers and Applicants; Personal Service Contract Records—Peace Corps Staff/Volunteers and ACTION Staff; Staff Applicant and Personnel Records; Talent Bank; Volunteer Applicant and Service Record Systems.

(1) Authority: 5 USC 552a(k)(5)

(2) Reasons: To ensure the frankness of information used to determine whether Peace Corps Volunteers applicants and Peace Corps Staff applicants are qualified for service with the agency.

§ 308.15 Identification of requesters.

The agency shall require reasonable identification of all individuals who request access to records to assure that records are not disclosed to persons not entitled to such access.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a driver's license, etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act of 1974.

(b) In the event that disclosure is requested by mail, the agency may request such information as may be necessary to reasonably assure that the individual making such request is properly identified. In certain cases, the agency may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation or identification, the agency may require a signed notarized statement asserting the identity of the individual and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(d) In the event a requester wishes to be accompanied by another person while reviewing his or her records, the agency may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

§ 308.16 Amendment of records and appeals with respect thereto.

(a) In the event an individual desires to request an amendment of his or her record, he or she may do so by submitting such written request to the Director, Administrative Services, Peace Corps, 806 Connecticut Avenue, N.W., Washington, D.C. 20526. The Director, Administrative Services, shall provide assistance in preparing any amendment upon request and a written acknowledgment of receipt of such request within 10 working days after the receipt thereof from the individual who requested the amendment. Such acknowledgment may, if necessary, request any additional information needed to make a determination with respect to such request. If the agency decides to comply with the request within the 10 day period, no written acknowledgment is necessary: *Provided however*, That a certification of the change shall be provided to such individual within such period.

(b) Promptly after acknowledgment of the receipt of a request for an amendment the agency shall take one of the following actions:

- (1) Make any corrections of any portion of the record which the individual believes is not accurate, relevant, timely or complete.
- (2) Inform the individual of its refusal to amend the record in accord with the request together with the reason for such refusal and the procedures established for requesting review of

such refusal by the head of the agency or his or her designee. Such notice shall include the name and business address of the reviewing official.

(3) Refer the request to the agency that has control of and maintains the record in those instances where the record requested remains the property of the controlling agency and not of the Peace Corps.

(c) In reviewing a request to amend the record the agency shall assess the accuracy, relevance, timeliness and completeness of the record with due and appropriate regard for fairness to the individual about whom the record is maintained. In making such determination, the agency shall consult criteria for determining record quality published in pertinent chapters of the *Federal Personnel Manual* and to the extent possible shall accord therewith.

(d) In the event the agency agrees with the individual's request to amend such record it shall:

- (1) Advise the individual in writing.
- (2) Correct the record accordingly, and
- (3) Advise all previous recipients of a record which was corrected of the correction and its substance.

(e) In the event the agency, after an initial review of the request to amend a record, disagrees with all or a portion of it, the agency shall:

- (1) Advise the individual of its refusal and the reasons therefore,
- (2) Inform the individual that he or she may request further review in accord with the provisions of these regulations, and
- (3) Specify The name and address of the person to whom the request should be directed.

(f) In the event an individual requester disagrees with the initial agency determination, he or she may appeal such determination to the Director of the Peace Corps or his or her designee. Such request for review must be made within 30 days after receipt by the requester of the initial refusal to amend.

(g) If after review the Director or designee refuses to amend the record as requested he or she shall advise the individual requester of such refusal and the reasons for same; of his or her right to file a concise statement in the record of the reasons for disagreeing with the decision of the agency; of the procedures for filing a statement of disagreement and of the fact that such statement so filed will be made available to anyone to whom the record is subsequently disclosed together with a brief statement of the agency summarizing its reasons for refusal, if the agency decides to place such brief statement in the record. The agency shall have the authority to limit the length of any statement to be

filed, such limit to depend upon the record involved. The agency shall also inform such individual that prior recipients of the disputed record will be provided a copy of both statements of the dispute to the extent that the accounting of disclosures has been maintained and of the individual's right to seek judicial review of the agency's refusal to amend the record.

(h) If after review the official determines that the record should be amended in accordance with the individual's request, the agency shall proceed as provided above in the event a request is granted upon initial demand.

(i) Final agency determination of an individual's request for a review shall be concluded with 30 working days from the date of receipt of the review request: *Provided however*, That the Director or designee may determine that fair and equitable review cannot be made within that time. If such circumstances occur, the individual shall be notified in writing of the additional time required and of the approximate date on which determination of the review is expected to be completed.

§ 308.17 Denial of access and appeals with respect thereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days after the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Act.

(a) In the event an individual desires to appeal any denial of access, he or she may do so in writing by addressing such appeal to the attention of the Director, Peace Corps, or designee identified in such denial. Such appeal should be addressed to Director, Peace Corps, c/o Office of Administrative Services, Room P-314, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

(b) The Director, or designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 30 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such request to have judicial

review of the denial as provided in the Act.

§ 308.18 Fees.

No fees shall be charged for search time or for any other time expended by the agency to produce a record. Copies of records may be charged for at the rate of 10 cents per page provided that one copy of any record shall be provided free of charge.

Dated: January 9, 1985.

Loret Miller Ruppe,

Director, Peace Corps.

[FR Doc. 85-1009 Filed 1-11-85; 8:45 am]

BILLING CODE 6051-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8-83-10]

Anchorage Regulations; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard has amended the anchorage regulations on the Lower Mississippi River by reducing the Alliance Anchorage two tenths (.2) of a mile. This action is necessary because of a planned barge fleet installation.

EFFECTIVE DATE: This rule will become effective February 13, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR R. E. FORD, Port Safety Officer, c/o U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New Orleans, LA 70117, Tel: 504 589-7117.

SUPPLEMENTARY INFORMATION: On November 1, 1983, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for this regulation (48 FR 50359). Interested persons were requested to submit comments and no comments were received.

Drafting Information: The drafters of this regulation are LT T. L. McCARTY, Project Officer, c/o Commander, Eighth Coast Guard District (mps), LCDR W. B. THOMAS, Project Attorney, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory

policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The small reduction in the length of the anchorage is not expected to have any significant effect on its safe use.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended by revising § 110.195(a)(6) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(6) Alliance Anchorage. An area 2.0 miles in length along the right descending bank of the river, 800 feet wide extending from mile 63.8 to mile 65.8 above Head of Passes.

* * * * *

(33 U.S.C. 471; 49 CFR 1.46; 33 CFR 1.05-1(g))

Dated: December 24, 1984.

T. T. Matteson,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 85-997 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 08-84-06]

Drawbridge Operation Regulations; Houma Canal and Little (Petit) Caillou Bayou, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the swing span bridge on LA 3197 (formerly U.S. 90) over Houma Canal, mile 1.7 at Houma, and the vertical lift span bridge on LA 24 over Little (Petit) Caillou Bayou, mile 33.7 at Presquille, both in Terrebonne Parish, Louisiana, by requiring that at least four hours advance notice be given for opening the draws at all times. The bridges presently are required to open on signal from 5 a.m. to 9 p.m. and on 12

hours notice from 9 p.m. to 5 a.m. This change is being made because of infrequent requests for opening the draws.

This action will relieve the bridge owner of the burden of having persons constantly available at the bridges from 5 a.m. to 9 p.m. and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 13 November 1984, the Coast Guard published a proposed rule (49 FR 44925) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 20 November 1984. In each notice, interested persons were given until 28 December 1984 to submit comments.

Drafting Information: The drafters of these regulations are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Comments: The only response to the public notice and the Federal Register was a comment of no objection from the National Marine Fisheries Service.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the bridge over Houma Canal averaged only 11 openings per month (one opening every three days) in 1983. In 1982, 1981 and 1980, there were 12.2, 23.8 and 11.2 average monthly openings, respectively. The bridge over Little (Petit) Caillou Bayou averaged only 5 openings per month (one opening every six days) in 1983. In 1982, 1981 and 1980, there were 4.5, 4.4 and 6.0 average monthly openings, respectively.

These few vessels can reasonably provide four hours notice for a bridge opening by placing a collect call at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233-7404, or during normal office hours to the LDOTD Office in Houma, Louisiana, telephone (504) 851-0900. Scheduling their arrival at the appointed time would involve little or no

additional expense to the mariners. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising §§ 117.453 and 117.475 to read as follows:

PART 111—DRAWBRIDGE OPERATION REGULATIONS

§ 117.453 Houma Canal.

The draw of the S3197 bridge, mile 1.7 at Houma, shall open on signal if at least four hours notice is given.

§ 117.475 Little (Petit) Caillou Bayou.

(a) The draws of the S58 bridge, mile 25.7 at Sarah, the Terrebonne Parish (Smith Ridge) bridge, mile 26.6 near Montegut, and the Terrebonne Parish (Duplantis) bridge, mile 29.9 near Bourg, shall open on signal; except that, from 9 p.m. to 5 a.m., the draws shall open on signal if at least 12 hours notice is given.

(b) The draw of the S24 bridge, mile 33.7 at Presquille, shall open on signal if at least four hours notice is given.

[33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3)]

Dated: January 2, 1985.

T. T. Matteson,

Captain, U.S. Coast Guard, Acting
Commander, 8th Coast Guard District.

[FR Doc. 85-996 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

Resource Protection Public Use and Recreation; Wildlife Protection—Hunting and Trapping

AGENCY: National Park Service, Interior.

ACTION: Interim Rule with Request for Comments.

SUMMARY: This interim rule amendment provides relief from the ban on trapping in four river areas, Buffalo National River, Ozark National Scenic Riverways, Saint Croix National Scenic Riverways, and Delaware Water Gap National Recreation Area, until there is a final order of the court in the pending lawsuit in the District Court for the

District of Columbia, or until January 15, 1987, whichever occurs first. The amendment will minimize hardships imposed on affected individuals using these areas, and permit the activity to continue until the courts pass upon the validity of § 2.2, which has been challenged in the pending lawsuit. The objective of the NPS in revising its general regulations was to clarify conflicting interpretations of regulations and policies, and to resolve inconsistencies in the management of park areas.

DATES: These regulations become effective January 14, 1985. Written comments will be accepted until February 13, 1985.

ADDRESS: Comments should be directed to: Director, National Park Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Tom Ritter, National Park Service, Washington, D.C. 20240, (202) 343-3227.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1983, the National Park Service published final regulations (48 FR 30252) for areas administered as part of the National Park System. These rules provide guidance and controls for public use of the National Park System. On December 27, 1983, the National Park Service published a proposed rule (48 FR 56971) seeking public comments on amendments to correct and clarify certain points in the final regulations published on June 30, 1983 (48 FR 30252). The regulations were adopted on April 30, 1984 (49 FR 7124) and May 7, 1984 (49 FR 19304). Section 2.2(b)(3) authorizes trapping in park areas only where such activities are specifically authorized by Federal statutory law. In addition, the regulation provides that trapping shall be permitted to continue until January 15, 1985 in eleven park areas.

One major objective of the NPS in revising its general regulations was to clarify conflicting interpretations of regulations and policies, and to resolve inconsistencies in the management of park areas. One issue needing clarification was trapping. It has been the long-standing policy of the NPS that, absent express congressional authorization, trapping will not be permitted.

The National Park Service found that in eleven areas of the park system trapping activities were practiced before the areas were set aside for NPS management, and because of an inconsistency in management application, trapping continued in these areas after their establishment.

Trappers in these areas were unaware of the long-standing policy and of the fact that the NPS does not permit trapping in the absence of specific congressional authorization. Application of the regulation without an exemption period would impose a hardship on the individuals affected. The NPS had originally thought that January 15, 1985 would provide a sufficient exemption. The NPS finds that there is no compelling need to extend the deadline for the majority of the eleven areas, but has found that this time period is inadequate for four of the eleven park areas. The four areas are river areas, Buffalo National River, Ozark National Scenic Riverways, Saint Croix National Scenic Riverway, Delaware Water Gap National Recreation Area, where trapping activities are important to the economic welfare of a large number of individuals. The implementation of the January 15, 1985 deadline would impose an unwarranted hardship, particularly when the validity of the regulation is being judicially challenged.

In light of the fact that these regulations are the subject matter of a pending lawsuit (the United States filed on December 6, 1984 a Motion for Summary Judgment in support of the National Park Service regulations) and continuation of trapping in these areas is not expected to have a significant resource impact, the National Park Service has decided to allow trapping to continue in these four areas only until the case of *NRA v. Arnett* is concluded or until January 15, 1987, which ever occurs first. The effect of this amendment to the regulations is to permit the judicial process to run its normal course.

In view of the fact that these issues were also under consideration by the 98th Congress, this time period will also provide an additional opportunity for Congress to consider the hunting and trapping issues, until such time as judicial process has been completed.

The National Park Service is issuing a final rule with a public comment period of 30 days because of the January 15, 1985 expiration of the exemption for trapping. Also, by issuing an interim rule the Service will avoid a hiatus period during the peak of the trapping season in these 4 areas when otherwise the activity would be prohibited until the expiration of the normal thirty day comment period.

This interim final rule should not be viewed as a departure from the National Park Service's long-standing policies set forth in the regulations published on April 30, 1984 and May 7, 1984, *supra*. Instead, the Service is adopting this

regulation in order to allow the judicial process to resolve the issue of whether the National Park Service's regulations were properly adopted.

Paperwork Reduction Act

This rulemaking contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Compliance with Other Laws

As required by the National Environmental Policy Act (42 U.S.C. 4332 et seq.), the Service prepared environmental assessments on those portions of this rulemaking for the April 30, 1984 publication and made a Finding of No Significant Impact (FONSI). Copies of the Environmental Assessment and FONSI are available at the address noted at the beginning of the rule or the individual part affected. The Service considers this documentation adequate and appropriate to support this rulemaking.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, February 19, 1981). In accordance with the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601, et seq.), the Service has determined that the regulations proposed in this rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis. The Service makes this finding because the proposed regulations will impose no significant costs on any class or group of small entities. Small businesses will generally benefit from these regulations because they will allow the continuation of existing activities within a number of park areas.

List of Subjects in 36 CFR Part 2

National Parks.

PART 2—[AMENDED]

In consideration of the foregoing, 36 CFR 2.2 is amended by revising paragraph (b)(3) as follows:

§ 2.2 Wildlife protection.

(b) *Hunting and trapping.* * * *

(3) Trapping shall be allowed in park areas where such activity is specifically mandated by federal statutory law. Provided however, that trapping may continue until there is a final order of the court in the pending lawsuit styled *National Rifle Association, et al. v. G. Ray Arnett, et al.*, United States District Court for the District of Columbia, Civil Action No. 84-1348 or until January 15,

1987, whichever occurs first, in the following park areas:

Buffalo National River, AK
Ozark National Scenic Riverways, MO
Saint Croix National Scenic Riverway,
WIS/MN
Delaware Water Gap National
Recreation Area, PA/NJ

(16 U.S.C. 1 and 3)

Dated: January 7, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 85-983 Filed 1-11-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-4-FRL-2754-7]

National Emission Standards for Hazardous Air Pollutants; Supplemental Delegation of Authority to Mississippi

AGENCY: Environmental Protection
Agency.

ACTION: Supplemental delegation of
authority.

SUMMARY: On September 26, 1984, the State of Mississippi requested a delegation of authority for the implementation and enforcement of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for equipment leaks (fugitive emission sources) of benzene. EPA's review of Mississippi laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these Federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: This delegation of authority to Mississippi was effective November 20, 1984.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE, Atlanta, Ga 30365.

All reports required pursuant to the newly delegated standards should not be submitted to the EPA Region IV office, but should instead be submitted to the following address: Mr. Charles H. Chisolm, Director, Bureau of Pollution Control, Mississippi Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39204.

FOR FURTHER INFORMATION CONTACT:
Thomas Devine at 404-257-3454.

SUPPLEMENTARY INFORMATION: Section 301 of the Clean Air Act, in conjunction with sections 101, 110, and 112, authorizes the Administrator to delegate his authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP), to any state which has submitted adequate implementation and enforcement procedures.

On November 30, 1981, EPA delegated to the State of Mississippi the authority to implement the NESHAP for asbestos, beryllium, mercury, and vinyl chloride (Subparts B-F of 40 CFR Part 61). This delegation was updated on June 13, 1984, by delegating to the State the newly revised NESHAP for asbestos (Subpart M of 40 CFR Part 61). On September 26, 1984, the State of Mississippi requested delegation of authority for two additional NESHAP categories:

1. *National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene, 40 CFR Part 60, Subpart J*, as promulgated June 6, 1984.
2. *National Emission Standard for Equipment Leaks (Fugitive Emission Sources), 40 CFR Part 60, Subpart V*, as promulgated June 6, 1984.

Action

Since review of the pertinent Mississippi laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NESHAP, I delegated to the State of Mississippi my authority for the source categories listed above on November 20, 1984.

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

This notice is issued under the authority of sections 101, 110, 112 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7412, and 7601)

Dated: December 21, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 85-984 Filed 1-11-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-4-FRL-2753-3]

Approval of a Delayed Compliance Order Issued by Memphis-Shelby County Health Department (MSCHD) to Cleo Wrap, Division of Gibson Greeting Cards, Inc.

AGENCY: Environmental Protection
Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the MSCHD to Cleo Wrap. The Order requires Cleo Wrap to bring air emissions from its six (6) rotogravure presses and two (2) tinter embossers at its Memphis, Tennessee, plant into compliance with Section 3-22 of the Memphis City Code (MCC) air pollution control regulations contained in the federally approved Tennessee State Implementation Plan (SIP). Because of the Administrator's approval, Cleo Wrap's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This rule takes effect on January 14, 1985.

FOR FURTHER INFORMATION CONTACT: E. Floyd Ledbetter, Chief, Northern Compliance Unit, Air Compliance Section, Air Management Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency Region IV Air, Pesticides, and Toxics Management Division Air Management Branch 345 Courtland Street, NE, Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION: On October 9, 1984, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 49, No. 196 at Page 39587, a notice proposing approval of a Delayed Compliance Order issued by the MSCHD to Cleo Wrap. The notice asked for public comments by November 8, 1984, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice. Therefore, the Delayed Compliance Order issued to Cleo Wrap is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Cleo Wrap on a schedule to bring its eight (8) printing presses into compliance as expeditiously as practicable with Section 3-22 of the MCC, part of the federally approved Tennessee State Implementation Plan. The Order also

imposes interim emission requirements as follows:

"... VOC emissions from the printing presses shall not exceed an average of 4.83 pounds of VOC per ream (as measured on a 30-day operating basis) from the effective date of this Order until December 31, 1984, and an average of 4.41 pounds of VOC per ream from December 31, 1984, until December 31, 1985. After December 31, 1985, the final emission limit will be 1.69 pounds of VOC per ream on a daily basis.

If the conditions of the Order are met, it will permit Cleo Wrap to delay compliance with the SIP regulations covered by the Order until December 31, 1985. The facility is unable to comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Cleo Wrap on a schedule which is effective under the Clean Air Act for compliance with the

applicable requirement(s) in the Tennessee State Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: January 4, 1985

William D. Ruckelshaus,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

Section 65.471 is amended by inserting the following in the table:

§ 65.471 EPA approval of state Delayed Compliance Orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
Cleo Wrap	Memphis	84-0153-01	MCC, 322 Ref. TAQA 1200-3-18-29.	Oct. 9, 1984	Dec. 31, 1985.

[FR Doc. 85-985 Filed 1-11-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Resources and Services Administration****42 CFR Part 36****Indian Health Service Grant Regulations, Technical Amendments**

AGENCY: Public Health Service, HRSA, HHS.

ACTION: Final rule.

SUMMARY: This final rule makes technical amendments to Indian Health Service (IHS) grant regulations to make them conform to the regulations of the Department of Health and Human Services (HHS) on grant administration, thereby eliminating duplication and conflict within the regulations.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kay Carpentier, Indian Health Service, 5600 Fishers Lane, Room 6A-29, Rockville, Maryland 20857, Telephone 301-443-5204.

SUPPLEMENTARY INFORMATION: On November 17, 1983, a notice of proposed rulemaking (NPRM) was published in the Federal Register (48 FR 52410 et seq.)

proposing to remove provisions in regulations governing IHS grants which conflict with, duplicate, state in different terms, or expand upon provisions in the Department's regulations contained in Title 45 Code of Federal Regulations, Part 74 Administration of Grants. Part 74 contains general grant administration requirements for HHS grants, including most grants made by the IHS. Interested persons were given until January 16, 1984, to submit written comments, suggestions, or objections.

A. Changes made from the proposed rules

After full and careful consideration of all comments received, certain provisions of the proposed rule have been revised as noted below:

1. The reference in § 36.114 of the proposed rule to 45 CFR Part 90, which concerns age discrimination government-wide is changed to 45 CFR Part 91, which applies specifically to age discrimination in HHS programs. Likewise, § 36.316 is changed to reflect 45 CFR Part 91 rather than 45 CFR Part 90.

2. The proposed rule removed § 36.105 (f) because it was thought to be redundant with the provision on Indian preference contained at § 36.121. However, one commentator pointed out that while § 36.105(f) contained both a preference for Indians in employment

and training and a preference for Indians and Indian-owned economic enterprises in the award of subcontracts in connection with the administration of the project, § 36.121 does not include the subcontracting preference, nor was it contained elsewhere in the present or proposed rule. Accordingly, § 36.120 which deals with the use of Indian business concerns has been changed to include the subcontracting preference.

B. Discussion of General Comments

1. One commentator objected to the presumption of a one year budget period contained in § 36.106 of the proposed rule because it would require separate applications each year and subject tribes to the risk that the project may be halted mid-stream where the total project period was for more than one year.

The purpose of these revisions is merely to clarify current policy that the budget information requested is only for the immediate budget period (normally 12 months) and not for the entire period for which support may be sought. In all cases, awards require a determination by the Secretary that funding is in the best interest of the government. Accordingly, such determinations regarding awards and funding levels of awards must take into consideration such factors as the grantee's progress and management practices, as well as the availability of funds.

2. It is suggested by one commentator that the elimination of certain provisions in Part 36 and replacing them with cross-references to Part 74 has the effect of evading the statutory requirement contained in section 107(c) of Pub. L. 93-638 for consultation with tribes prior to any future changes in these requirements.

We do not agree. In our view, section 107(c) requires the Department to go through notice and comment procedures prior to amending regulations under Pub. L. 93-638. The requirement in section 107(c) to consult with appropriate national and regional Indian organizations " * * * to the extent practicable * * *" has been satisfied by the rulemaking process itself as well as the additional measure of mailing information regarding the proposed changes directly to the tribes and tribal organizations and to the appropriate Congressional Committees. The assertion that once this process is complete the proposed changes cannot be made because they would circumvent future consultation requirements on any subsequent changes to deleted material is groundless because it would have the effect of precluding any change. The law provides only that the Secretary consult

prior to making changes, not that no changes may be made.

3. Two commentators have asked whether section 36.110(b)(2) conflicts with or precludes application of the Indian preference provision of Section 7(b) of Pub. L. 93-638 or the Buy Indian Act to facilities construction.

Proposed § 36.110(b)(2) states that " * * * no preference will be given to local contractors or suppliers over non-local contractors or suppliers, *except as otherwise provided in these regulations.*" (emphasis added). The underlined portion thus protects the preference provided in § 36.120. Use of Indian business concerns, and § 36.121, Indian preference in training in employment. In addition, section 303(a) of Pub. L. 94-437 permits the Secretary to use the negotiating authority of the Buy Indian Act (25 U.S.C. 47) to give preference to Indians and Indian firms in the construction and renovation of IHS facilities. The implementing regulations for section 303(a) are contained in 41 CFR Subpart 3-4.57 et seq.

4. One commentator suggested that there is a conflict between the evaluation criteria for the initial award of recruitment grants in § 36.313(a) and the criteria in new § 36.313(c) for the award of grant funds for subsequent annual budget periods after the first year. Section 36.313(a) states that the Secretary may award grants "to those applicants whose proposed projects will, in his judgment, best promote the purposes of section 102 of the Act," and lists factors to be considered in making that judgment. Section 36.313(c) provides that awards for budget periods beyond the first year will be based on consideration of the grantee's progress and management factors and the availability of funds. Section 36.313(c) goes on to state the "In all cases, awards require a determination by the Secretary that funding is in the best interest of the Government." The commentator suggested that the phrase "best promote the purposes of section 102 of the Act" in § 36.313(a) conflicts with the phrase "best interest of the government" in new § 36.313(c).

In our view, these standards are not inconsistent. On the contrary, proposals which best promote the purposes of the Act would be those most likely to be viewed by the Secretary as being in the best interest of the government, provided funds were available for such proposals.

Paperwork Reduction Act

Section 36.104 contains information reporting requirements. This reporting requirement has been approved by the

Office of Management and Budget and assigned number 0915-0045. The approval expiration date is July 31, 1987.

The final rule contained in this notice conforms the regulations to requirements already applicable. Therefore, there are no independent cost implications. For these reasons, the Secretary has determined that the rule is not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

List of Subjects in 42 CFR Part 36

Alaska natives, Eskimos, Grant programs—education, health, Health, Health facilities, Health professions, Indians.

Dated: September 25, 1984.

Edward N. Brandt, Jr.,
Assistant Secretary for Health.

Dated: December 11, 1984.

Margaret M. Heckler,
Secretary.

PART 36—[AMENDED]

For the reasons set out in the preamble, Subpart H and Subpart J of 42 CFR Part 36 are amended as follows:

1. The Table of Contents for Subpart H is amended by removing reference to the appendix and revising the headings for §§ 36.108 and 36.114 to read as follows:

Subpart H—Grants for Development, Construction, and Operation of Facilities and Services

Sec.	
36.108	[Reserved]
36.114	Applicability of other Department regulations

2. Section 36.104 is amended by removing paragraph (b) and paragraph (d)(1), by redesignating paragraph (c) as paragraph (b), by redesignating the introductory text of paragraph (d), and paragraphs (d)(2),(3) and (4) as the introductory text of paragraph (c), and paragraphs (c)(1),(2) and (3), respectively. Section 36.104 is also amended by revising paragraph (a) and paragraph (b)(7) as so redesignated, and by adding a reference to the OMB control number at the end of the section, to read as follows:

§ 36.104 Application.

(a) Forms for applying for grants are governed by 45 CFR Part 74, Subpart N.

(b) * * *

(7) An itemized budget for the budget period (normally 12 months) for which support is sought and justification of the amount of grant funds requested.

(Approved by the Office of Management and Budget under control number 0915-0045)

3. Section 36.105 is amended by removing paragraphs (d), (f), and (h) and redesignating paragraphs (e), (g) and (i) as paragraphs (d), (e), and (f), respectively, and by revising paragraph (e), as so redesignated, to read as follows:

§ 36.105 Project elements.

(e) Keep in force adequate liability insurance in accordance with the approved application unless the Secretary, for good cause shown, has determined that such insurance was not obtainable or appropriate or has determined that such insurance may be permitted to expire or lapse. The insurance shall provide that prior to cancellation the Secretary must be notified and must further provide that for each such policy of insurance the carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

Note.—This provision is excepted from application of 45 CFR 74.15 by Section 103(c) of Pub. L. 93-638.

4. Section 36.106 is amended by revising paragraphs (b) and (c) to read as follows:

§ 36.106 Grant award and evaluation.

(b) The Notice of Grant Awards specifies how long the Secretary intends to support the project period without requiring the project to re-compete for funds. This period, called the project period, will usually be for one to two years. The total project period comprises the original project period and any extension. Generally the grant will be for a one-year budget period, any subsequent award will also be a one-year budget period. A grantee must submit a separate application for each

subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, awards require a determination by the Secretary that funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

5. Section 36.107 is amended to revise paragraph (a) and add a note at the end of paragraph (b), to read as follows:

§ 36.107 Use of project funds.

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the regulations of this subpart, the terms and conditions of the award and the applicable cost principles prescribed in subpart Q of 45 CFR Part 74.

Note.—This provision is excepted from application of 45 CFR 74.53 by Section 104(c) of Pub. L. 93-638.

§ 36.108 [Reserved]

6. Section 36.108 is removed and reserved.

7. Paragraph (b) of 36.110 is revised to read as follows:

§ 36.110 Facilities construction.

(b) The following requirements are applicable to each construction grant to build, renovate, modernize, or remodel a hospital, clinic, health station or quarters for housing personnel associated with such facilities.

(1) Competitive bids. The approval of the Secretary shall be obtained before the project is advertised or placed on the market for bidding. The approval shall include a determination by the Secretary that the final plan and specifications conform to the minimum standards of construction and equipment specified in the grant award or in HHS documents specified in the grant award.

(2) There will be no preference given to local contractors or suppliers over non-local contractors or suppliers, except as otherwise provided in these regulations.

(3) Construction contracts and subcontracts under this program are subject to the Davis-Bacon Act (40 U.S.C. 276a et seq.). For requirements

that grantees must observe for enforcing compliance by contractors and subcontractors, see the section on contract provisions in the procurement standards for HHS grantees made applicable by Subpart P of 45 CFR Part 74.

(4) Minimum standards of construction and equipment. The plans and specifications for the project will conform to the minimum standards of construction and equipment specified in the grant award or in HHS documents specified in the grant award.

(5) The following provision must be included in all construction contracts let by the grantee: "The Secretary of the Department of Health and Human Services shall have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection."

8. Section 36.111 is amended to add a note at the end of the section to read as follows:

§ 36.111 Interest.

Note.—This provision is excepted from application of 45 CFR 74.47(a) by Section 106(b) of Pub. L. 93-638.

9. Section 36.114 is revised to read as follows:

§ 36.114 Applicability of other Department regulations.

Several other regulations apply to grants under this subpart. These include to the extent applicable but are not limited to:

- 42 CFR Part 50, Subpart D, Public Health Service grant appeals procedure
- 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board
- 45 CFR Part 74, Administration of grants
- 45 CFR Part 75, Informal grant appeals procedures
- 45 CFR Part 84, Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
- 45 CFR Part 86, Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
- 45 CFR Part 91, Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

Note.—To the extent they provide special benefits to Indians, grants under this subpart are exempted from the requirements of section 601 of the Civil Rights Act of 1964 [42 U.S.C. 200d], prohibiting discrimination on the basis of race, color or national origin, by regulation at 45 CFR 80.3(d) which provides, with respect to Indian health services, that,

"An individual shall not be deemed subjected to discrimination by reasons of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

10. Section 36.115 is amended to add a note after paragraph (f) to read as follows:

§ 36.115 Rescission of grants.

Note.—This section is an exception to 45 CFR Part 74, Subpart M required by section 109 of Pub. L. 93-638.

11. Section 36.116 is amended to add a note at the end of the section to read as follows:

36.116 Reports.

Note.—This section is a requirement in addition to 45 CFR Part 74 and is required by section 5(c) of Pub. L. 93-638.

12. Section 36.120 is amended to add a comma after the word "contracts", on the fourth line of paragraph (b), and to add the word "subcontracts" thereafter. Section 36.120 is further amended by adding the following note to the end thereof.

§ 36.120 Use of Indian Business concerns.

Note.—This section is an exception to 45 CFR Part 74, required by section 7(b) of Pub. L. 93-638.

Appendix A to Subpart H—[Removed]

13. Appendix A to Subpart H is removed.

(Secs. 104, 107, 25 U.S.C. 450 h(b), 450k sec. 3 Pub. L. 83-568—42 U.S.C. 2003)

14. The authority citation for Subpart J is revised to read as follows:

Authority: Secs. 102, 103, 106, 502, 702, and 704 of Pub. L. 94-437 (25 U.S.C. 1612, 1613, 1615, 1652, 1672 and 1674); Sec. 338G of the Public Health Service Act, 95 Stat. 908 (42 U.S.C. 254r).

15. The table of contents for subdivision J-2 is revised to read as follows:

Subdivision J-2 Health Professions

Recruitment Program for Indians

- Sec.
- 36.310 Health professions recruitment grants.
 - 36.311 Eligibility.
 - 36.312 Application.
 - 36.313 Evaluation of grant awards.
 - 36.314 Use of funds.
 - 36.315 Publication of list of grantees and projects.
 - 36.316 Other HHS regulations that apply.

16. In 36.301, paragraph (b)(3) is revised to read as follows:

§ 36.301 Policy and applicability.

(b) * * *

(3) The award of Indian Health Scholarship grants pursuant to section 338G of the Public Health Service Act (42 U.S.C. 254r) to Indian or other students in health professions schools (Subdivision J-4):

17. Section 36.302 is amended by removing and reserving paragraphs (c) and (1), removing paragraph (v)(3), and redesignating paragraphs (v)(4) and (v)(5) as (v)(3) and (v)(4), respectively, and by revising paragraph (v)(1) to read as follows:

§ 36.302 Definitions.

(v) * * *

(1) Is governed by an Indian controlled board of directors:

§ 36.305 [Amended]

18. The Note after § 36.305 is amended by removing paragraph (b) and (c).

19. Section 36.312 is amended by removing paragraph (b), redesignating paragraphs (c) through (g) as (b) through (f), respectively, and by revising paragraphs (a) and (b)(5), as so redesignated, to read as follows:

§ 36.312 Application.

(a) Forms for applying for grants are governed by 45 CFR Part 74, Subpart N.

(b) * * *

(5) An itemized budget for the budget period (normally 12 months) for which support is sought and justification of the amount of grant funds requested:

20. Section 36.313 is amended by removing paragraph (e) and by revising paragraphs (c) and (d) to read as follows:

§ 36.313 Evaluation of grant awards.

(c) The Notice of Grant Awards specifies how long the Secretary intends to support the project period without requiring the project to re-compete for funds. This period, called the project period, will usually be for one to two years. The total project period comprises the original project period and any extension. Generally the grant will be for a one year budget period, any subsequent award will also be a one year budget period. A grantee must submit a separate application for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds.

In all cases, awards require a determination by the Secretary that funding is in the best interest of the Federal Government.

(d) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

21. Section 36.314 is revised to read as follows:

§ 36.314 Use of funds.

A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in subpart Q of 45 CFR Part 74.

22. Section 36.316 is revised to read as follows:

§ 36.316 Other HHS regulations that apply.

Several other regulations apply to grants under this subdivision. These include but are not limited to:

- 42 CFR Part 50, Subpart D, Public Health Service grant appeals procedure
- 42 CFR Part 16, Procedures of the Departmental Grant Appeals Board
- 45 CFR Part 74, Administration of grants
- 45 CFR Part 75, Informal grant appeals procedures
- 45 CFR Part 84, Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
- 45 CFR Part 86, Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
- 45 CFR Part 91, Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 36.317-36.319 [Removed]

23. Sections 36.317, 36.318, and 36.319 are removed.

§ 36.330 [Amended]

24. Section 36.330 is amended by removing the words "Subpart IV of Part C of Title VII" and inserting in their place the words "338A through 339G."

§ 36.332 [Amended]

25. Section 36.332 is amended by removing the words "Section 757(b)(2)" and inserting in their place the words "Section 338G(b)(2)."

[FR Doc. 85-871 Filed 1-11-85; 8:45 am]

BILLING CODE 4160-16-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**
44 CFR Part 64
[Docket No. FEMA 6639]
**Suspension of Community Eligibility
under the National Flood Insurance
Program; Maine et al.**
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.

PART 64—[AMENDED]

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 Number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I Maine: Cumberland	Freeport, town of	230046B	June 11, 1975, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	July 26, 1974 and June 18, 1976.	Jan. 17, 1985.
Region II New York: Genesee	Batavia, town of	360278B	July 31, 1975, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	May 3, 1974 and November 4, 1975.	Do.
Region III Pennsylvania: Chester	West Cain, township of	421497B	May 19, 1976, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	September 6, 1974 and August 6, 1976.	Do.
Virginia	Virginia Beach, city of	515531C	Sept. 11, 1970, Emerg.; Apr. 23, 1971, Reg.; Jan. 17, 1985, Susp.	October 3, 1970, July 1, 1974, and October 8, 1976.	Do.

State and county	Location	Community Number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region V					
Indiana:					
Decatur and Shelby:	St. Paul, town of	180399B	Sept. 25, 1975, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	February 1, 1974 and June 11, 1976.	Do.
Dearborn:	West Harrison, town of	180042B	Oct. 1, 1975, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	September 6, 1974 and May 14, 1976.	Do.
Ohio: Logan:	DeGraff, village of	390609B	July 16, 1975, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	July 18, 1975 and Aug. 25, 1976.	Do.
Wisconsin:					
Eau Claire:	Eau Claire, city of	550128C	Mar. 19, 1971, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	Sept. 20, 1974 and Sept. 24, 1976.	Do.
Rock:	Janesville, city of	555560B	Mar. 26, 1971, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	Mar. 31, 1972, July 1, 1974 and Dec. 19, 1975.	Do.
Region VII					
Kansas: Decatur:	Oberlin, city of	200073B	Mar. 19, 1975, Emerg.; Jan. 17, 1985, Reg.; Jan. 17, 1985, Susp.	Jan. 9, 1974 and Dec. 12, 1975.	Do.
Missouri: Scott and New Madrid:	Sikeston, city of	295270C	Aug. 6, 1971, Emerg.; Aug. 3, 1971, Reg.; Jan. 17, 1985, Susp.	Aug. 3, 1974, July 1, 1974, July 9, 1976 and Apr. 29, 1977.	Do.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(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: January 7, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-953 Filed 1-11-85; 8:45 am]

BILLING CODE 6718-07 #

44 CFR Part 64

[Docket No. FEMA 6638]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities

listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 287-0876, 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. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the 5th column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or

federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

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

Pursuant to the provisions 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. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—flood plains.

PART 64—[AMENDED]

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities

State and county	Location	Community number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Colorado: Rio Blanco	Unincorporated areas	080288	Nov. 23, 1984, Emerg	
Ohio: Richland	do	390476A	Dec. 11, 1984, Emerg	Feb. 24, 1978.
Oklahoma: Seminole	do	400497A	do	June 8, 1982.
Missouri:				
Stoddard	do	290845A	Dec. 12, 1984, Emerg	Oct. 18, 1983.
Vernon	do	290841A	do	Dec. 15, 1983.
Colorado: Clear Creek	Silver Plume, town of	080200A	Dec. 5, 1984, Emerg; Dec. 5, 1984, Reg	Dec. 13, 1974, and Jan. 17, 1979
Ohio: Montgomery	Huber Heights, city of	390884-New	Dec. 11, 1984, Emerg; Dec. 11, 1984, Reg	
North Carolina: Nash, Wilson, and Edgecombe	Sharpsburg, town of	370441-New	Dec. 18, 1984, Emerg	
Florida: Lake	Mascotte, city of	120591B	Dec. 18, 1984, Emerg; Dec. 18, 1984, Reg	Sept. 21, 1979, and Nov. 15, 1984.
Massachusetts: Hampden	Chester, town of	250136B	Dec. 18, 1984, Emerg; Dec. 18, 1984, Reg	July 19, 1974, Nov. 19, 1976, and Oct. 16, 1984.
California: Santa Cruz	Capitola, city of	060354B	July 2, 1975, Emerg; Aug. 15, 1984, Reg; Aug. 15, 1984, Susp.; Dec. 18, 1984, Rein.	May 17, 1974, Mar. 19, 1976, and Aug. 15, 1984.
Region I				
Maine: Cumberland	Yarmouth, town of	230055B	Nov. 15, 1984, suspension withdrawn	Mar. 1, 1974, and Sept. 17, 1978.
Region II				
New York:				
Rensselaer	Castle-on-Hudson, village of	360673B	do	Mar. 1, 1974, and Aug. 6, 1976.
Chenango	Norwich, town of	360162B	do	Sept. 20, 1974 and Sept. 12, 1975.
Region V				
Wisconsin: Columbia	Lodi, city of	550061B	do	Apr. 12, 1974, and Aug. 6, 1976.
Minnesota: Nicollet	Unincorporated areas	260625B	do	Aug. 26, 1977.
Region VI				
Texas: Tarrant	Kennedale, city of	480603	do	Feb. 1, 1974, and Jan. 14, 1977.
Region X				
Oregon: Coos	Unincorporated areas	410042B	do	Nov. 1, 1974, and Sept. 6, 1977.
Region I				
Connecticut: Fairfield	West Port, town of	060019B	Dec. 4, 1984, suspension withdrawn	July 19, 1980, and Dec. 4, 1984.
Massachusetts: Berkshire	Sandisfield, town of	250039B	do	June 26, 1974, and Dec. 24, 1976.
Region II				
New Jersey: Bergen	Lodi, borough of	340047C	do	July 27, 1973, Apr. 30, 1976, and Feb. 15, 1978.
Mercer	Princeton, township of	340252B	do	June 15, 1973, and May 26, 1976.
New York: Chemung	Elmira, city of	360150B	do	Aug. 31, 1973, and Mar. 18, 1976.
Region III				
Pennsylvania: Chester	Charlestown, township of	421475B	do	Oct. 18, 1974, and May 14, 1976.
West Virginia: Mingo	Unincorporated areas	540133C	do	Dec. 20, 1974, Aug. 5, 1977, and Dec. 2, 1980.
Region IV				
Georgia: Stephens	Toccoa, city of	130231B	do	June 28, 1974, and Oct. 24, 1975.
North Carolina: Avory	Newland, town of	370012B	do	June 14, 1974, and Oct. 1, 1976.
South Carolina: Beaufort	Unincorporated areas	450025C	do	Sept. 30, 1977.
Region V				
Illinois:				
Ogle	Bryon, city of	170526B	do	May 10, 1974, and June 18, 1975.
Moultrie	Dalton City, village of	170522B	do	May 3, 1974, and July 30, 1975.
Macon	Unincorporated areas	170928B	do	Sept. 8, 1978.
Michigan:				
Oakland	Holly, village of	260587A	do	Oct. 3, 1975.
Ottawa	Hudsonville, city of	260493A	do	Sept. 5, 1975.
Ohio: Hancock	Findlay, city of	390244B	do	Jan. 23, 1974, and May 21, 1976.
Wisconsin: Washington	Hartford, city of	550473B	do	Jan. 9, 1974, and May 14, 1976.
Region VI				
Texas:				
Jefferson	Beaumont, city of	485457B	do	Sept. 2, 1970, July 1, 1974, and Nov. 14, 1975.
Fort Bend	Rosenberg, city of	480232B	do	June 28, 1974, and Aug. 22, 1975.
Region IX				
Arizona: Graham	Unincorporated areas	040032B	do	Jan. 17, 1975, and Nov. 29, 1977.
Region X				
Arizona: Lemhi	Salmon, city of	160093A	do	June 25, 1976.
New York:				
Steuben	Addison, town of	360751B	Dec. 19, 1984; Suspension withdrawn	Sept. 6, 1974, and Mar. 26, 1976.
Erie	Amherst, town of	360226C	do	Mar. 8, 1974, Aug. 6, 1976, and July 7, 1978.
Allegany	Amity, town of	361093B	do	Nov. 8, 1974, and July 23, 1976.
Do	Belmont, village of	360025B	do	Feb. 1, 1974, and Apr. 23, 1976.
Wayne	Clyde, village of	360890B	do	May 31, 1974.
Chautauqua	Hanover, town of	365336B	do	Sept. 18, 1971, July 1, 1974, and Oct. 31, 1975.
Allegany	Hume, town of	361007A	do	Sept. 10, 1976.
Livingston	Portage, town of	361029B	do	Aug. 16, 1974, and June 18, 1976.

State and county	Location	Community number	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region III				
West Virginia: Raleigh	Unincorporated areas	540189B	do	Apr. 25, 1975, and Apr. 23, 1982
Region IV				
Georgia: Gwinnett	Berkeley Lake, city of	130450A	do	July 23, 1976
Region V				
Illinois:				
Clinton and Marion	Centralia, city of	170453C	do	May 3, 1974, Apr. 16, 1976, and Oct. 15, 1976
Jackson	Elkville, village of	170876B	do	Mar. 28, 1975, and Feb. 9, 1979
Grundy	Morris, city of	170263	do	Apr. 12, 1974, and June 4, 1976
LaSalle	North Utica, village of	170822C	do	Mar. 21, 1975, Jan. 23, 1976, and Aug. 24, 1979
Indiana: Knox	Vincennes, city of	180120C	do	June 21, 1974, Sept. 24, 1976, and May 27, 1977
Ohio:				
Pickaway	Circleville, city of	390447C	do	Apr. 12, 1974, Nov. 28, 1975, and Sept. 15, 1978
Hamilton	Elmwood Place, village of	390213B	do	Feb. 1, 1974, and Apr. 23, 1976
Portage	Streetsboro, city of	390797B	do	May 26, 1978
Wisconsin: Sauk and Columbia	Wisconsin Dells, city of	550065C	do	Dec. 17, 1973, June 11, 1976, and Aug. 31, 1979
Region VI				
Texas: Montgomery	Oak Ridge North, city of	481560	do	
Region VII				
Iowa: Clinton	Camanche, city of	190068B	do	Jan. 23, 1979
Region IX				
California: Santa Barbara	Lompoc, city of	060334B	do	May 24, 1974, and July 23, 1976
Region X				
Idaho: Ada	Unincorporated areas	160001B	do	June 28, 1977
Oregon: Klamath	do	410109B	do	Dec. 27, 1974, and July 18, 1978
Washington: Skagit	LaConner, town of	530156B	do	May 24, 1974, and July 23, 1976

¹ The city of Huber Heights has adopted by reference Montgomery County's map for flood insurance and floodplain management purposes. The County's Effective FIRM date is: Dec. 15, 1981, Community No. 390775B.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 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: January 7, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-955 Filed 1-11-85; 8:45 am]

BILLING CODE 5718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

[Docket No. 41036-4136]

Fishermen's Protective Act Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: NOAA issues this rule revising the administration of the Fishermen's Guaranty Fund (the "Fund") under section 7 of the Fishermen's

Protective Act of 1967 (the Act). This revision is needed because there have been major changes in characteristics of seizures covered by the Act and it is necessary to standardize and clarify compensation methods. This revision will provide consistent and specific guidelines for applying for and receiving compensation covered under the Act.

DATES: This interim rule is effective January 14, 1985. Comments on the interim rule will be considered if received by February 6, 1985.

ADDRESS: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Page Building 2, Room 309, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Charles L. Cooper (Program Leader, NMFS), 202 634-4688.

SUPPLEMENTARY INFORMATION: Section 7 of the Act established the Fund. The Fund compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by the seizure and detention of their vessels by foreign countries. Losses covered by the Fund include: confiscation, spoilage, damage, lost fishing time, and other incidental costs. Fees for these agreements pay the majority of claims. The Secretary of State has a separate program under

Section 3 of the Act which covers fines, license fees, registration fees, or any other direct charge imposed in addition to the fines or fees. This revision clarifies both the submission and the processing of guaranty agreement applications and claims against the Fund. This clarification is necessitated by major changes in seizures, including longer detentions and more frequent and costlier confiscations, and the realization that the rules were not specific enough in some areas (particularly, the computation of lost fishing income).

The method for computing compensation for lost fishing time is standardized. Provision is made to exclude vessels' normal "downtime" when no income would be lost. Depreciated replacement cost is made the standard compensation basis for capital equipment other than vessels. The standard for vessels remains market value.

Classification

The NOAA Administrator determined that this interim rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. It is not major within that context because it does not significantly affect the economy, costs or prices, competition, employment, investment or productivity.

This rule is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553, because it relates to benefits or contracts. Matters "relating to . . . benefits, or contracts" are excepted from the Act, 5 U.S.C. 553(a)(2).

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by Section 553 of the Administrative Procedure Act or by any other law. Neither an initial nor a final regulatory flexibility analysis was prepared.

The rule imposes no new collection of information requirement for the purposes of the Paperwork Reduction Act. It continues existing requirements which have been approved by the Office of Management and Budget under control number 0648-0095.

This action does not require an environmental impact analysis because it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Agency has determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

The Catalog of Federal Domestic Assistance number is 11.410.

List of Subjects in 50 CFR Part 258

Administrative and Practice and Procedure, Claims, Fisheries, Fishing Vessels, Penalties, Seizures and forfeitures.

Dated: January 7, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

PART 258—FISHERMEN'S PROTECTIVE ACT PROCEDURES

Accordingly, Subpart A of 50 CFR Part 258 is revised to read as follows:

Subpart A—Seizures of U.S. Commercial Fishing Vessels

Sec.	
258.1	Purpose.
258.2	Definitions.
258.3	Eligibility.
258.4	Applications.
258.5	Guaranty agreement.
258.6	Fees.
258.7	Conditions for claim.
258.8	Claim procedure.
258.9	Amount of award.
258.10	Payments.
258.11	Records.
258.12	Penalties.

Authority: 22 U.S.C. 1977.

Subpart A—Seizures of U.S. Commercial Fishing Vessels

§ 258.1 Purpose.

These rules clarify procedures for the administration of section 7 of the Fishermen's Protective Act of 1967. Section 7 establishes a Fishermen's Guaranty Fund to reimburse owners and charterers of United States commercial fishing vessels for certain losses and costs caused by the seizure and detention of their vessels by foreign countries under certain rights or claims not recognized by the United States.

§ 258.2 Definitions.

For the purpose of this part, the following terms mean

(a) *Act*. The Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1977 *et seq.*).

(b) *Capital equipment*. Equipment or other property which is depreciated for income tax purposes.

(c) *Citizen*. Any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

(d) *Depreciated replacement cost*. The present replacement cost of capital equipment after being depreciated on a straightline basis over the equipment's depreciable life, which is standardized at ten years.

(e) *Downtime*. The time a vessel normally would be in port or transiting to and from the fishing grounds.

(f) *Expendable items*. Any property which is maintained in inventory or expensed for tax purposes.

(g) *Fund*. The Fishermen's Guaranty Fund established in the U.S. Treasury under Section 7(c) of the Act (22 U.S.C. 1977(c)).

(h) *IATTC*. Inter-American Tropical Tuna Commission.

(i) *Other direct charge*. Any levy which is imposed in addition to, or in lieu of, any fine, license fee, registration fee, or other charge.

(j) *Owner*. The owner or charterer of a commercial fishing vessel.

(k) *Secretary*. The Secretary of Commerce or his designee.

(l) *Seizure*. Arrest and detention of a fishing vessel by a foreign country for allegedly illegal fishing.

(m) *U.S. fishing vessel*. Any private vessel documented or certificated under the laws of the United States as a commercial fishing vessel.

§ 258.3 Eligibility.

Any owner or charterer of a U.S. fishing vessel is eligible to apply for an

agreement with the Secretary providing for a guaranty in accordance with Section 7(a) of the Act.

§ 258.4 Applications.

(a) *Applicant*. An eligible applicant for a guaranty agreement must

(1) Own or charter a U.S. fishing vessel, and;

(2) Submit with his application the fee specified in section 258.6 below.

(b) *Application forms*. Application forms may be obtained by writing to the Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235 or by calling (202) 634-4688.

(c) *Where to apply*. Applications must be submitted to the Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235.

(d) *Application approval*. Application approval will be by the Secretary's execution of the guaranty agreement.

(Approved by the Office of Management and Budget under control number 0648-0095).

§ 258.5 Guaranty agreement.

(a) *Period in effect*. Agreements are effective for a fiscal year beginning October 1 and ending on the next September 30. Applications submitted after October 1 are effective from the date the application was mailed (determined by the postmark) through September 30.

(b) *Guaranty agreement transfer*. A guaranty agreement may, with the Secretary's consent, be transferred when a vessel which is the subject of a guaranty agreement is transferred to a new owner if the transfer occurs during the agreement period.

(c) *Guaranty agreement renewal*. A guaranty agreement may be renewed for the next agreement year without resubmitting an application form if the appropriate fee for the next year is submitted before expiration of the existing agreement. Renewals are subject to the Secretary's approval.

(d) *Provisions of the agreement*. The agreement will provide for reimbursement for certain losses caused by foreign countries' seizure and detention of U.S. fishing vessels on the basis of claims to jurisdiction which are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States; or, in the case where a general claim of exclusive fishery management authority is recognized by the United States and a U.S. fishing vessel is seized on the basis of conditions and restrictions which

- (1) Are unrelated to fishery conservation and management;
- (2) Fail to consider traditional practices of U.S. fishing vessels;
- (3) Are more onerous than those applied to foreign fishing vessels by the United States in its Fishery Conservation Zone;
- (4) Fail to allow U.S. fishing vessels equitable access to fishery resources under the foreign countries' exclusive management authority.

§ 258.6 Fees.

(a) *General.* Fees provide for administrative costs and at least one third of projected claims. Fees are set annually on the basis of past and anticipated claim experience. The annual agreement year for which fees are payable starts on October 1 and ends on the following September 30.

(b) *Amount and payment.* The amount of each annual fee or adjusted fee will be established by the Chief, Financial Services Divisions, by publication of a notice in the *Federal Register*. Each notice will establish the amount of the fee, when the fee is due, when the fee is payable, and any special conditions surrounding extension of prior agreements or execution of new agreements. Unless otherwise specified, agreement coverage will commence with the date of fee payment.

(c) *Adjustment and refund.* Fees may be adjusted at any time to reflect actual seizure and detention experience for which claims are anticipated. Failure to submit adjusted fees will result in agreement termination as of the date the adjusted fee is payable. No fees will be refunded after an agreement is executed by the Secretary.

(d) *Disposition.* All fees will be deposited in the Fishermen's Guaranty Fund. They will remain available without fiscal year limitation to carry out Section 7 of the Act. Claims will be paid first from fees and then from appropriated funds. Fees not required to pay administrative costs or claims may be invested in U.S. obligations. All earnings will be credited to the Fishermen's Guaranty Fund.

§ 258.7 Conditions for claims.

- (a) Payment will be made when—
 - (1) A covered vessel is seized by a foreign country under conditions specified in the Act and the guaranty agreement; and
 - (2) The incident occurred during the period the guaranty agreement was in force for the vessel involved; unless there is clear and convincing credible evidence that the seizure did not meet the requirements of the Act.

(b) Payments will be made to the owner for—

(1) All actual costs (except those covered by section 3 of the Act or reimbursable from some other source) incurred by the owner during the seizure or detention period as a direct result thereof, including:

- (i) Damage to, or destruction of, the vessel or its equipment;
- (ii) Loss or confiscation of the vessel or its equipment; or
- (iii) Dockage fees or utilities.

(2) The market value of fish or shellfish caught before seizure of the vessel and confiscated or spoiled during the period of detention, and;

(3) Up to 50 percent of the vessel's gross income lost because of the seizure and detention.

(c) *Exceptions.* No payment will be made from the Guaranty Fund for a seizure which is

(1) Covered by any other provision of law (for example, fines, license fees, registration fees, or other direct charges payable under Section 3 of the Act, administered by the Secretary of State);

(2) Made by a country at war with the United States;

(3) In accordance with any applicable convention or treaty, if that treaty or convention was made with the advice and consent of the Senate and was in force and effect for the United States and the seizing country at the time of the seizure;

(4) Which occurs before the guaranty agreement's effective date or after its termination;

(5) For which other possible sources of alternative reimbursement have not first been fully pursued (for example, the insurance coverage required by the agreement and valid claims under any law); or

(6) For which material requirements of the guaranty agreement, the Act, or the program regulations have not been fully fulfilled.

§ 258.8 Claim procedure.

(a) *Where and when to apply.* Claims must be submitted to the National Marine Fisheries Service, Financial Services Division, Washington, D.C. 20235. They must be submitted within 90 days after the vessel's release. Requests for extension of the filing deadline must be in writing and approved by the Chief, Financial Services Division.

(b) *Contents of claim.* All material allegations of a claim must be supported by documentary evidence. Foreign-language documents must be accompanied by an authenticated English translation. Claims must include the following:

(1) The captain's sworn statement about the exact location and activity of the vessel when seized;

(2) Certified copies of charges, hearings, and findings by the government seizing the vessel;

(3) A detailed computation of all actual costs directly resulting from the seizure and detention, supported by receipts, affidavits, or other documentation acceptable to the Chief, Financial Services Division;

(4) A detailed computation of lost income claimed, including

(i) The date and time seized and released,

(ii) The number of miles and steaming time from the point of seizure to the point of detention,

(iii) The total fishing time lost (explain in detail if lost fishing time claimed is any greater than the elapsed time from seizure to the time required after release to return to the point of seizure),

(iv) The tonnage of catch on board at the time of seizure,

(v) The vessel's average catch-per-day's fishing for the three calendar years preceding the seizure,

(vi) The vessel's average downtime between fishing trips for the three calendar years preceding the seizure,

(vii) The price-per-pound for the catch on the first day the vessel returns to port after the seizure and detention, and;

(5) Documentation for confiscated, damaged, destroyed, or stolen equipment, including

(i) The date and cost of acquisition, supported by invoices or other acceptable proof of ownership, and

(ii) An estimate from a commercial source of the replacement or repair cost.

(c) *Burden of proof.* The claimant has the burden of proving all aspects of the claim. (Approved by the Office of Management and Budget under control number 0648-0095).

§ 258.9 Amount of award.

(a) *Lost fishing time.* Compensation is limited to 50 percent of the gross income lost as a direct result of the seizure and detention, based on the value of the average catch-per-day's fishing during the three most recent calendar years immediately preceding the seizure. Only the following two methods of computing lost fishing time compensation are acceptable. Claimants may use either method. Claimants for tuna vessel seizures must use IATTC's catch statistics.

(1) First method (this method must use annual catch divided by 365 days to calculate catch-per-day):

(i) Multiply days lost as a direct result of seizure and detention by average

catch-per-day during last three calendar years.

(ii) Multiply amount in paragraph (a)(1)(i) of this section by market price, and

(iii) Divide by two to get the compensable amount, or:

(2) Second method (*always use IATTC statistics for all calculations*):

(i) Subtract tonnage aboard at time of seizure from highest trip tonnage during last three calendar years.

(ii) Divide amount in paragraph (a)(2)(i) of this section by average catch-per-day during last three calendar years to get remaining fishing days required to fill vessel.

(iii) Subtract amount in (a)(2)(ii) of this section from number of days detained.

(iv) If amount in (a)(2)(iii) of this section is negative or zero, multiply number of days detained by average catch-per-day during last three calendar years (if not, go on to (v)).

(v) If amount in (a)(2)(iii) of this section is positive and is equal to or less than average downtime, multiply amount in (a)(2)(ii) of this section by average catch-per-day during last three calendar years (if not, go on to (vi)).

(vi) If amount in (a)(2)(iii) of this section is positive and is greater than average downtime, subtract average downtime and multiply the sum of this amount and the amount in (a)(2)(ii) of this section by the average catch-per-day during last three calendar years (subtract additional downtime each time the sum computed in this manner exceeds average trip time during last three calendar years).

(vii) Multiply amount in (a)(2)(iv), (v), or (vi) of this section, whichever is applicable, by market price, and

(viii) Divide by two to get the compensable amount.

(b) *Value of catch loss by weight class.* Each seizure claim submitted must contain a copy of the catch landing receipt for the trip preceding the seizure. This document provides a detailed size and species mix of the catch and the price paid per weight class for each (e.g., yellowfin over 7½ lbs. @ \$1,200/ton and yellowfin under 7½ lbs. @ \$1,100/ton, etc.). The Secretary will determine from the catch landing receipt an average by weight class of the amount of catch on

the trip prior to the seizure, apply this percentage to the average catch per day's fishing (IATTC's figure), and arrive at a figure relating to the approximate catch for each applicable species. The following method will be used:

(1) The relative percentages for each weight class will be determined by dividing each weight class by the sum of them all, and;

(2) IATTC's catch rate will be multiplied by each weight class percentage to arrive at an average for each weight class. The average for each weight class will be multiplied by the relative price per pound (for each class) to determine the value per weight class.

(c) *Stolen or confiscated property.* Confiscation of property which the claimant was required to buy back from the confiscator is reimbursable by the State Department under Section 3 of the Act. Any other property confiscated is reimbursable from this Guaranty Fund. Confiscated property is divided into the following categories:

(1) Compensation for confiscation of vessels, where no buy back has occurred, will be based on market value as determined by the Secretary;

(2) Compensation for *capital equipment* other than vessel, will be based on depreciated replacement cost.

(3) Compensation for *expendable items* will be 50 percent of their replacement cost; and

(4) Compensation for confiscated catch will be for full value, based on the price-per-pound on the first day the vessel returns to port after the detention.

(d) *Fuel expense.* Compensation for fuel expenses will be based on the purchase price, the time required to run to and from the fishing grounds, the detention time in port, and the documented fuel consumption of the vessel.

(e) *Insurance proceeds.* No payments will be made from the Fund for losses covered by any policy of insurance or other provisions of law.

(f) *Appeals.* All determinations under this section are final.

§ 258.10 Payments.

The Chief, Financial Services Division, will pay the claimant the amount calculated under section 258.9. If

there is a dispute about who should be paid what, the Chief will settle it after requesting proof of interest from all parties.

§ 258.11 Records.

The Chief, Financial Services Division, will have the right to inspect claimants' books and records as a precondition to approving claims.

All claims must contain written authorization of the guaranteed party for any international, federal, state, or local governmental agencies to provide the Chief, Financial Services Division, any data or information pertinent to a claim.

§ 258.12 Penalties.

Persons who willfully make any false or misleading statement or representation to obtain compensation from the Fund are subject to criminal prosecution under 22 U.S.C. 1980(g). This provides penalties up to \$25,000 or imprisonment for up to one year, or both. Any evidence of criminal conduct will be promptly forwarded to the United States Department of Justice for action. Additionally, misrepresentation, concealment, and fraud, or acts intentionally designed to result in seizure, may void the guaranty agreement.

[FR Doc. 85-888 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 611

[Docket No. 41276-4176]

Foreign Fishing

Correction

In FR Doc. 84-34032 beginning on page 468 in the issue of Friday, January 4, 1985, make the following corrections:

1. On page 469, in the table, in the fourth column, in the ninth entry from the bottom, "42.2" should have read "42.7".

2. On page 470, in the table, in the fourth, fifth and sixth columns, six lines from the bottom, insert the following footnote designation after "1.550": "11".

BILLING CODE: 1505-01-M

Proposed Rules

Federal Register

Vol. 50, No. 9

Monday, January 14, 1985

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

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 84-125]

Importation of Certain Animal Embryos

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: This document reopens the comment period for a proposed rule which proposed to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. This action is needed to allow industry representatives and other interested persons adequate time in which to prepare comments. This document also announces that a public hearing will be scheduled to receive additional comments on the proposed rule. The date, time, and place for the public hearing will be announced in the Federal Register as soon as the hearing is scheduled.

DATE: Comments must be received on or before July 15, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. D.E. Herrick, Senior Staff Veterinarian, Import-Export Animals and Products Staff, VS, APHIS, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION: On October 22, 1984, a document was published in the Federal Register [49 FR 41257-41261] which proposed to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses.

The proposed rule provided for receipt of comments on or before December 21, 1984. An industry representative has requested additional time to review the proposal and offer substantive comments, particularly with respect to the methodology for determining the disease status and the disease transmitting capability of animal embryos. Further, the proposed rule has generated considerable interest in the U.S. livestock industry and the international embryo transfer industry.

The Department is concerned about the time involved in extending the comment period since it is interested in having regulations governing the importation of such embryos as soon as possible. However, the Department also wants to receive meaningful comments and has encouraged active participation by the public in this rulemaking process in order to develop a final rule which will be workable and effective. Therefore, it has been determined that the comment period should be reopened for 180 days. Accordingly, any additional written comments must be received on or before July 15, 1985.

Also, a public hearing will be scheduled to receive additional comments on the proposed rule. The date, time, and place for the public hearing will be announced in the Federal Register as soon as the hearing is scheduled.

Done at Washington, D.C., this 8th day of January, 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-1022 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 535

[No.: 85-23]

Consumer Protections; Unfair and Deceptive Trade Practices

Dated: January 3, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board is statutorily required, with certain exceptions, to promulgate a rule similar to the consumer protection rules issued by the Federal Trade Commission. The Commission adopted such a rule on March 1, 1984 (with an effective date of March 1, 1985) which prohibits the use of four contract provisions and finds two other practices also to be unfair and deceptive. The Board is now proposing for comment a document similar to that adopted by the Commission.

DATES: Proposed effective date: May 1, 1985. Comments must be received on or before March 15, 1985.

ADDRESS: Send comments to Ben F. Dixon, Office of Community Investment, Division of Consumer and Civil Rights, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Ben F. Dixon, Office of Community Investment, Division of Consumer and Civil Rights, (202) or Nancy Feldman, Associate General Counsel for Regulatory Review, Office of General Counsel, (202) 377-6440, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission ("FTC") has issued a rule on consumer credit practices (49 FR 7740, March 1, 1984; to be codified at 16 CFR 444.1-444.5), which becomes effective on March 1, 1985. Under section 18 of the FTC Act ("Act", 15 U.S.C. 57a (1982)), the FTC is given authority to issue regulations to protect consumers from unfair and deceptive trade practices. The only entities which may not be subject to such a rule are federally regulated financial institutions. Under the Act (15 U.S.C. 57a(f)), the Federal Reserve Board ("FRB") and the Federal Home Loan Bank Board ("Board") have enforcement and rule making authority for the institutions that each regulates. The section of the Act giving the Board authority to promulgate the FTC consumer protection rules covers all associations and savings banks that are members of the Federal Home Loan Bank System ("member institutions"). The Board and the FRB have 60 days after the effective date of the FTC rule

(March 1, 1985) to (1) promulgate the FTC rule, (2) adopt a similar rule, or (3) decline to adopt such a rule on a finding that the practices being regulated do not constitute unfair or deceptive practices in regard to consumers who are customers of regulated financial institutions.

The FTC's Credit Practices Rule prohibits four loan contract clauses and a procedure for charging multiple late fees, and requires a disclosure notice to be given to all cosigners of notes. The prohibitions and notice would apply to *non-real estate loans* only. However, *consumer loans* which are secured in part by real estate or mobile home liens, as provided in Insurance regulation § 561.38 (12 CFR 561.38) would be covered by this rule. The prohibited clauses are as follows:

1. *Confessions of Judgment*—a "cognovit", which is a type of contract clause providing for a waiver of a debtor's right to notice and the opportunity to be heard in the event of a suit or other process as a result of a debtor's default, and for the entry of a judgment against the debtor resulting therefrom.

2. *Wage Assignments*—a contract clause that provides, at the creditor's option, for a transfer of a debtor's wages to the creditor upon default without notice or hearing.

3. *Security Interest in Household Goods*—a contract clause giving a creditor a non-possessory lien on personal property; specifically, the rule would prohibit a security interest in a debtor's household goods.

4. *Waivers of Exemption*—a contract clause containing a waiver or limitation of exemption from attachment, execution, or other process on a debtor's real or personal property.

The rule also prohibits a lender from engaging in any practice (including any accounting method) which would result in "pyramiding" late charges, that is, charging multiple late charges for one late payment. Finally, the rule requires lenders to disclose in writing to potential cosigners that they will have to repay the loan if the debtor does not.

As originally proposed in 1977 and 1978 by the FTC staff, the Credit Practices Rule would have covered many more practices than the final rule adopted by unanimous vote by the FTC in 1984. In fact, the final rule the FTC adopted would prohibit only the most purportedly egregious practices by lenders, practices which currently are banned by a number of states.

Applicability of the FTC Rule to Board-Regulated Institutions

The FTC Rule applies only to loans *not* secured by real estate or mobile homes. As such, this rule, or a Board version similar to it, would only apply to a small portion of most member institutions' current loan portfolios. However, such loans, as a result of the Depository Institutions Act of 1982 ("DIA") (Pub. L. 97-320, 96 Stat. 1469), are becoming more prevalent in federal institutions' loan mixes. The DIA gave federal savings and loan associations and savings banks more authority to lend funds outside the traditional area of home finance. As a result, the provisions in the FTC rule are relevant to federal institutions which avail themselves of their new powers to lend. See 12 CFR Part 545 ("New Powers" regulations) (1983). Other members of the Bank System may be more affected by the rule, depending upon their portfolio mix.

Savings institutions, however, generally are increasing their involvement in consumer installment credit. In 1981, such credit held by savings and loan associations and savings banks totaled \$11.2 billion. By June of 1984, the figure had reached \$28.7 billion. Furthermore, member institutions appear to be using installment credit contract forms that will be subject to the provisions of the FTC rule. In fact, the preliminary information gathered by the Board's staff indicates that many of the prohibited practices are part of many institutions' current consumer contracts.

Evidentiary and Procedural Considerations

There is evidence that these practices are used by savings and loan associations and savings banks. The survey conducted by the Board's Office of Examinations and Supervision (OES) shows a number of these practices are being used by member institutions making consumer loans.

The OES survey consisted of a sample of notes and security documents from 122 member institutions in 27 states. The documents for 72 institutions (59%) include language which waives presentment notice and dishonor; 8 institutions (0.6%) use documents that include a confession of judgment; 16 (13%) use homestead waivers; and 56 (46%) include other types of waivers.

With respect to non-possessory liens, 7 institutions (0.6%) provide for a lien against household goods; 11 (1%) obtain a lien against all personal property; and 63 (52%) use a form which is easily adaptable to the non-possessory lien in that it contains a blank space in which the security property is to be identified. It was also noted that 39 institutions (32%) used a document that provides

that the security for the loan also secures all other loans from that institutions to the same borrower.

The survey found no indication of the use of wage assignments, nor did it disclose the surveyed institutions' practices with respect to late charges or to disclosures on a cosigner's obligations.

Although no extensive reliance on such devices was evident from the survey, it is apparent that member institutions have used contractual devices to secure consumer loans that are available to other lenders. Similarly, the Board's Office of Community Investment (OCI), in reviewing consumer complaints relevant to the FTC Rule in the first two quarters of 1984, found that seven consumer complaints were reported to the Federal Home Loan Banks on this subject (Cincinnati, two complaints—both multiple late charges; Chicago, four complaints—all multiple late charges; and Seattle, one complaint—security interest in household goods).

While evidence developed by the FTC demonstrates that these practices are unfair to consumers, specific evidence is lacking to show that member institutions have frequently used the described clauses in an unfair or deceptive manner. This situation may be the result of the fact that, currently, consumer loans are a novelty for most member institutions, and are only a small part of the overall lending pattern of the Board's regulatees. On the other hand, the comprehensive evidence developed in the FTC proceedings, addressed to the large volume of consumer lending by lenders other than member institutions, demonstrates that these practices meet the section 5(a)(1) statutory test required by the FTC Act for a practice to be found unfair and deceptive. Since the nature of all consumer lending is similar, whether by member institutions or other types of lenders, in the absence of contrary evidence, it appears reasonable to adopt the FTC findings.

The evidence collected by the Board's staff indicates that the rule would be more in the nature of prospective regulation rather than a rule limiting current practices. Given the continuing expansion of consumer loan activity by member institutions, complaints have the potential to increase to a level equivalent to that found by the FTC for other lenders. In light of this possible development, it is appropriate for the Board to address the issue in a timely manner. The Board, therefore, has determined to propose regulations on consumer credit practices similar to those adopted by the FTC, to apply to

member institutions. The Board, however, is interested in receiving public comments on all aspects of the proposed regulation, and particularly solicits comments on the following specific questions from member institutions, and from other interested parties.

(1) To what extent do member institutions either use such practices in their own contracts or purchase contracts that contain prohibited practices?

(2) What is the burden of reviewing purchased contracts for the removal of provisions permitting such practices?

(3) What proportion of personal loans is secured by non-purchase money security interests in household goods? What proportion of these is made to low-income consumers with no alternative collateral?

(4) To what extent should any part of the rule be modified to take into account the unique situation of member institutions?

(5) Are any of the specified acts or practices not unfair as engaged in by member institutions?

(6) To what extent did modifications in the FTC's final rule satisfy concerns of the thrift industry expressed in the rulemaking record?

(7) To what extent would the cost or availability of credit be affected by the rule?

(8) What is the potential impact of the rule on small member institutions, especially in relation to other member institutions?

(9) What nonregulatory alternatives exist to any rulemaking?

(10) To what extent should a delayed effective date be provided for any or all of the rule that may be adopted?

In the report language accompanying the amendments to the FTC Act (Pub. L. 96-37, 93 Stat. 95), it was indicated that the Congress intended the Board (as well as the FRB) to conduct a hearing before issuing a rule which would be at variance with an FTC Rule. See House Report No. 265, 96th Cong., 1st Session (1979), at 5. Presently, such a hearing is unnecessary, as the Board has proposed to adopt the FTC's rule. Furthermore, if the Board's findings are not at variance with the FTC, and, consequently, the Board adopts a similar rule, *de novo* hearings by the Board would be superfluous and unproductive.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, (Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980)), the Board is providing the following initial regulatory flexibility analysis.

1. Reasons, objectives, and legal bases underlying the proposed rules. These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. Small entities to which the rules will apply. This rule would apply to all Federal Home Loan Bank System members.

3. Impact of the proposed rules on small institutions. To the extent that the rule would affect small institutions, this has been discussed elsewhere in the proposal.

4. Overlapping or conflicting federal rules. At present, the Board has no regulations for non-real estate loans either limiting or allowing the practices to be prohibited by the FTC Rule. Board regulations governing late charges on real estate secured loans, and on loans secured by mobile homes, are not in conflict with the FTC late-charge rule.

5. Alternatives to the proposed rules. Upon a finding by the Board that the practices addressed by FTC regulation are not unfair or deceptive in relation to the operations of member institutions, such institutions would be exempt from the FTC rule. Current evidence to support such an alternative is lacking. However, should information derived from public comments and other sources produce such evidence, with regard to one or more of the described practices, the Board would consider this alternative in its final rulemaking determinations.

List of Subjects in 12 CFR Part 535

Federal Home Loan Bank System.

Accordingly, the Board hereby proposes to add a new Part 535, Subchapter B, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

Amend Subchapter B by adding at the end thereof a new Part 535, as follows:

PART 535—PROHIBITED CONSUMER CREDIT PRACTICES

Sec.

535.1 Definitions.

535.2 Unfair credit practices.

535.3 Unfair or deceptive cosigner practices.

535.4 Late charges.

535.5 State exemptions.

535.6 Scope of part.

Authority: Sec. 57a, Pub. L. 93-637, 88 Stat. 2193, as amended; Pub. L. 96-37, 93 Stat. 95; sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437, Reorg. Plan No. 3 of 1947, 3 CFR 1943-1948 Comp.

§ 535.1 Definitions.

(a) *Act*. For the purposes of this part, the Federal Trade Commission Act, 15 U.S.C. 57a.

(b) *Antique*. Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(c) *Consumer*. A natural person who seeks or acquires goods, services, or money for personal, family, or household use.

(d) *Cosigner*. A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

(e) *Creditor*. A member institution.

(f) *Debt*. Money that is due or alleged to be due from one to another.

(g) *Earnings*. Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(h) *Household goods*. Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(i) *Member institution*. A person who engages in the business of lending money to consumers, and who is a member of a Federal Home Loan Bank.

(j) *Obligation*. An agreement between a consumer and a lender.

(k) *Person*. An individual, corporation, or other business organization.

§ 535.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers after [effective date of regulation], it is an unfair act or practice within the meaning of Section 5 of the Act for a member institution directly or indirectly to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings, unless:

(i) The assignment by its terms is revocable at the will of the debtor;

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a nonpossession security interest in household goods other than purchase-money security interest.

§ 535.3 Unfair or deceptive cosigner practices.

(a) *General*. In connection with the extension of credit to consumers, after [effective date of regulations], it is:

(1) A deceptive act or practice within the meaning of Section 5 of the Act for a member institution, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of Section of the Act for a member institution, directly or indirectly, to obligate a cosigner unless the cosigner is informed, prior to becoming obligated (which, in the case of open-end credit, shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed), of the nature of his or her liability as cosigner.

(b) *Notice of cosigner(s)*. A disclosure consisting of a separate document that shall contain the following statement and no other, shall be given to the cosigner prior to becoming obligated (which, in the case of open-end credit, shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed) and shall constitute compliance with the consumer information requirement of paragraph (a)(2) of this section:

Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

§ 535.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer after [effective date of this regulation], it is an unfair act or practice within the meaning of Section 5 of the Act for a member institution, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For the purposes of this part, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 535.5 State exemptions.

(a) Upon application to the Board by an appropriate state agency, the Board shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule;

(b) If the Board makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Board.

§ 535.6 Scope of part.

This part shall not apply to extensions of credit secured by liens on real estate, real estate leases, or mobile homes, except for those extensions of credit so secured as defined in § 561.38 of this chapter.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85-909 Filed 1-11-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AAL-3]

Proposed Designation of Transition Area, Savoonga, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Savoonga, AK. A new VORTAC has been installed at Savoonga, AK, and two instrument approach procedures have been developed to the Savoonga, AK, Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

DATES: Comments must be received on or before February 25, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-3, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-3." 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's

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 procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Savoonga, AK, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Savoonga, AK, Airport. A new VOR/DME has been installed at Savoonga, AK, and will be commissioned in December 1984. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts

the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

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:

Savoonga, AK—(New)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Savoonga Airport (lat. 63°41'30" N., long. 170°28'30" W.); and within 13 miles northwest and 4.5 miles southeast of the 046° radial from the Kukuliak VOR (lat. 63°41'34" N., long. 170°28'15" W.) extending from the VOR to 18.5 miles northeast of the VOR. (Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on January 4, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-936 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AAL-15]

Proposed Alteration of Additional Control Area 1485, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise controlled airspace north and east of Alaska to eliminate overlapping airspace designations. This proposal also would expand a portion of that controlled airspace eastward along the United States/Canada flight information region boundary to facilitate a more efficient application of air traffic control procedures.

DATE: Comments must be received on or before February 25, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-15, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-15." 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's

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 procedure.

The Proposal

The FAA is considering an amendment to § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise Additional Control Area 1485 to: (1) Eliminate a portion of it which extends into the Alaska Positive Control Area; (2) designate the floor and ceiling as Flight Level (FL) 230 and FL 450 respectively; and (3) extend it eastward along arctic routes Papa and Quebec between Barter Island nondirectional beacon and longitude 141 degrees west. The proposed elimination of overlapping controlled airspace and establishment of a ceiling for Additional Control Area is consistent with recent airspace actions designed to standardize and simplify airspace designations. The proposed airspace extension would allow controllers to apply more efficient air traffic control procedures and thereby promote aviation fuel conservation. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not

warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of

Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Additional control areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Control 1485—[Revise]

That airspace extending upward from FL 230 to FL 450 within the area bounded by a line beginning at lat. 66°00'00" N., long. 165°30'00" W.; to lat. 66°00'00" N., long. 166°58'23" W.; to lat. 72°00'00" N., long. 158°00'00" W.; to lat. 71°00'00" N., long. 144°00'00" W.; to lat. 75°00'00" N., long. 141°00'00" W.; to lat. 69°41'45" N., long. 141°00'00" W.; thence westward by a line 3 nautical miles from and parallel to the shoreline to the point of beginning, excluding that portion that lies within the Point Barrow, AK, Control Zone and Jet Route 507 between Deadhorse, AK, and Barrow, AK.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (49 FR 9565); [49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)]; and 14 CFR 11.65)

Issued in Washington, D.C., on January 4, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-939 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Proposed Modifications to the Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on modified portions of the Wyoming permanent regulatory program. On July 24, 1984 (49 FR 29807), OSM announced a public comment period and procedure for requesting a public hearing on the substantive adequacy of proposed amendments to the Wyoming permanent regulatory program under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Wyoming on June 25, 1984. The amendments submitted by Wyoming are modifications to the Wyoming regulations that establish procedures for requesting and processing variances of approved performance standards, provisions for self-bonding and provisions for inspection, enforcement and civil penalty assessments for surface coal mining operations. OSM is reopening the comment period to allow the public an opportunity to comment on supplemental material relating to the proposed amendment submitted by Wyoming on November 1, 1984.

DATE: Written comments not received on or before 4:00 p.m. on January 29, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to William R. Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644.

Copies of the supplemental material submitted by Wyoming and other relevant documents are available for review at the Casper Field Office and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge on single copy of the Wyoming amendment by contacting:

Office of Surface Mining, Reclamation and Enforcement, Administrative Record Room, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240
Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: William R. Thomas, Field Office Director, Casper Field Office, Office of Surface Mining, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 328-5830.

SUPPLEMENTARY INFORMATION: The general background on the permanent regulatory program, the State program approval process, the Wyoming program and the conditional approval, can be found in the Secretary's Findings and conditional approval published in the November 26, 1980 Federal Register (45 FR 78637-78684).

On June 25, 1984, Wyoming submitted to OSM a program amendment that establishes procedures for requesting and processing variances of approved performance standards, provisions for self-bonding and provisions for inspection, enforcement and civil penalty assessments for surface coal mining operations. The July 24, 1984

Federal Register announced receipt of the modification by OSM as well as a public comment period (49 FR 29807). In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held.

On November 1, 1984 Wyoming submitted additional material to further clarify the proposed amendments. Copies of the additional material are available in the OSM Administrative Record. OSM is reopening the comment period in order to allow the public an opportunity to review and comment on the additional material submitted to OSM by the State on November 1, 1984. Specifically, OSM is seeking comment on whether the material submitted by Wyoming on November 1, 1984, together with the proposed amendments submitted on June 25, 1984 satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, 30 U.S.C. 1201, *et seq.*

Dated: January 9, 1985.

William B. Schmidt,

Assistant Director, Program Operation and Inspection.

[FR Doc. 85-1006 Filed 1-11-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD7-84-40]

Special Anchorage Area; Indian River at Vero Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The Coast Guard is considering a proposal to establish a Special Anchorage Area in the Indian River near Vero Beach, FL. The number of permanently moored vessels and cruising vessels using this area as an anchorage has substantially increased in the last several years. There is presently no designated anchorage area for these vessels. Other vessels passing through the area are subject to substantial hazard, particularly at night, because of the randomly anchored vessels. This rulemaking is needed to

provide a defined anchorage area and to provide a clear channel for the general boating public to move unobstructed through the anchorage.

DATES: Comments must be received on or before February 28, 1985.

ADDRESSES: Comments should be mailed to Commander (mps), Seventh Coast Guard District, 51 S.W. First Avenue, Miami, FL 33130. The comments will be available for inspection and copying at 51 S.W. First Avenue, Room 827, telephone (305) 350-5651. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (J.G.) Harry D. Craig, (305) 350-5651.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7-84-40) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant (J.G.) Harry D. Craig, project officer, Seventh Coast Guard District Port Safety Branch, and Lieutenant Commander Kenneth E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The City of Vero Beach, Fla. has requested that the Coast Guard establish a Special Anchorage Area in the Indian River between Fritz Island and Vero Beach. The Number of boats using this area at any one time as an anchorage has increased from less than 10 to more than 50 in a 4 year period. As there is no defined anchorage area, these vessels anchor randomly and make it very difficult for other vessels to safely transit the area, especially at

night. This branch of the Indian River is a well recognized but unmarked anchorage area recommended in most of the waterway cruising guides for the east coast of Florida. A number of vessels are permanently moored in this area together with a large number of cruising vessels, particularly in the spring and fall transient season. The area has a substantial amount of boating activity, with three marinas, a yacht club, and a small boat ramp ashore. The adjoining area to the northeast is lined with waterfront homes, many of which have their own private docks. All of these vessels normally pass through the area to reach the Intercoastal Waterway channel.

The City of Vero Beach intends to appoint a Harbor Master to supervise the Special Anchorage area and to keep the marked access channel and established turning basin clear of anchored vessels. This is to provide a safe anchorage area for all vessels and to serve the needs of transient vessels with adjacent on-shore health and garbage facilities. In addition, it provides a method of obtaining information to notify vessel operators in case of emergency or violation of City ordinances. There is no intention of using the anchorage area for commercial exploitation.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that full regulatory evaluation is unnecessary. This regulation will provide a defined anchorage area and clear channel into an area already being used as an anchorage by many permanent and transient vessels.

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, by adding § 110.73b to read as follows:

§ 110.73b Indian River at Vero Beach, Fla.

The waters between Orchid Island (N. Hutchinson Is.) and Fritz Island except

for the marked channels, as defined by an area bounded by the shoreline and by lines at latitude 27°40'01.8" N. to the north, latitude 27°39'13.7" N. to the south, longitude 80°22'11.5" W. to the east, and longitude 80°22'25.9" W. to the west. Vessels shall be anchored so that no part of the vessel obstructs the channels leading into and through the anchorage area.

Authority: 33 U.S.C. 2030, 2035, and 2071; CFR 1.46; and 33 CFR 1.05-1(g).

Dated: December 31, 1984.

R.P. Gueroni,

Rear Admiral, U.S. Coast Guard, Command Seventh Coast Guard District.

[FR Doc. 85-998 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Changes in Handling of Undeliverable As-Addressed Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Governors of the United States Postal Service have established changes in mail classifications which affect the forwarding and return of mail and the availability of address correction service. Those changes become effective February 17, 1984. The rulemaking proposes changes in postal regulations necessary to implement those mail classification changes as well as other related regulation changes concerning forwarding and return and address correction.

The general changes being implemented and proposed in this rulemaking are as follows:

1. Address correction service is changed to make address corrections more available and to eliminate the fee whenever possible. The use of separate address correction notices will be eliminated when practical by placement of the new address on the mail piece being returned. When a correction is provided incidental to the return of the mail piece, the address correction fee will no longer be assessed. Only when a separate correction notice is provided will the correction fee be charged.

2. The Postal Service will now retain change of address information for eighteen months, instead of the current twelve. This change is intended to facilitate correction of mailers' address lists.

3. All First-Class Mail, including Priority Mail and post and postal cards, will receive free nationwide forwarding

and return. Express Mail, which already receives that service, will not be changed.

4. All undeliverable-as-addressed second-class mail will be forwarded nationwide at no charge for a period of up to 60 days. After 60 days, an address correction notice will generally be sent to the publisher if a further issue of the publication is received bearing the old address. Additional postage for the return of second-class mail will be based on the applicable third-class or fourth-class rate.

5. The obvious value concept will no longer be applied in the treatment of undeliverable-as-addressed third-class and fourth-class mail. Forwarding and return treatment will be the same, whether the item appears to have value or not. Unendorsed bulk third-class mail will not be forwarded or returned. All unendorsed single-piece third-class mail will be treated as though it were endorsed, *Do Not Forward, Address Correction Requested, Return Postage Guaranteed*. Unendorsed fourth-class mail will be treated as though it were endorsed *Forwarding and Return Postage Guaranteed*.

6. Third-class mail will be forwarded only if requested by the mailer or if insured. Postage due will not be charged to the recipient for forwarding. Charges for forwarding and return service will be assessed only on those pieces actually returned to sender. The charge for those returned pieces is the appropriate single-piece third-class rate multiplied by a factor derived from the ratio of the number of third-class pieces nationwide endorsed for forwarding and return treatment that are successfully forwarded to the number of those pieces that cannot be forwarded and are returned to the sender. The mailer will pay the third-class single-piece rate for each piece receiving return only service.

A large number of conforming changes to the mail forwarding and return regulations are also proposed. They are discussed in the supplementary information section of this notice.

DATES: Comments concerning these proposals must be received on or before February 8, 1985. Proposals on which substantive comments are requested are identified by an asterisk (*) in the Supplementary Information portion of this notice. Implementation of this rule change, to the extent it is adopted following the consideration of comments, is scheduled for February 17, 1985 to coincide with the implementation of previously announced postal rate and classification changes.

ADDRESS: Written comments should be directed to the General Manager, Address Information Systems Division, Delivery Services Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260-7233. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Address Information Systems Division, Room 7431, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Stephanie Tolson, (202) 245-4948.

SUPPLEMENTARY INFORMATION: In a decision issued on December 12, 1984, and revised on December 21, 1984, the Governors of the United States Postal Service, acting in accordance with 39 U.S.C. 3625, approved a decision of the Postal Rate Commission recommending changes in permanent rates of postage and fees for domestic postal services, and a number of mail classification changes. The Governors ordered the recommended changes into effect on a permanent basis. The Board of Governors of the Postal Service also determined on December 12, 1984, that these changes would become effective at 12:01 a.m. on February 17, 1985.

In accordance with these actions by the Governors and the Board of Governors, the Postal Service published a notice of the rates, fees, and classification changes which would become effective on February 17, 1985. See 50 FR 1010 (January 8, 1985).

A number of the mail classification changes recommended by the Postal Rate Commission and established by the Governors of the postal Service concerned the forwarding and return of mail and the availability of address correction service. Those changes, which are published in full text in the above cited notice, are summarized as follows:

1. All First-Class Mail will now receive free forwarding and return when undelivered as addressed. Previously, heavier weight pieces (Priority Mail) did not receive free forwarding and post and postal cards were not returned.

2. The forwarding and/or return of second-class mail will now be prescribed by the Postal Service.

3. The second-class transient rate, which was previously applied to pieces that were forwarded or returned, will be eliminated. The appropriate single piece third- or fourth-class rate will now be charged.

4. Undeliverable-as-addressed third-class mail will now be forwarded or

returned solely at the request of the mailer. The addressee will no longer be able to request the forwarding of third-class mail.

5. Undeliverable-as-addressed third-class mail receiving return only service will continue to be charged return postage at the single-piece third-class rate. However, postage on pieces receiving forwarding and return service will be charged in a new manner—charges will be assessed only on those pieces which cannot be forwarded and are returned, and those returned pieces will pay a multiple of the applicable return postage rate to compensate for the pieces that are successfully forwarded. The postage in this circumstance will be the appropriate single-piece third-class rate multiplied by a factor derived from the ratio of the number of third-class pieces nationwide endorsed for forwarding and return treatment that are successfully forwarded to the number of those pieces that cannot be forwarded and are returned. In the past, the Postal Service attempted to collect forwarding postage from the addressee. Now the mailer who requests forwarding of third-class mail pay for attempted forwarding through the charge that is assessed on those mail pieces which are returned.

6. The applicability of the fee for address correction service will be changed. Previously, the fee was charged every time address correction information was provided to a mailer. Now no fee will be assessed when the correction is provided incidental to the return of the mail piece to the sender.

These mail classification changes, which were proposed to the Postal Rate Commission by the Postal Service, are the product of a broad review of the forwarding and return system that began several years ago. On October 29, 1981, the Postal Service published proposed changes to its mail forwarding and return regulations and solicited comments thereon. 46 FR 53458. The written comments that were submitted were used in the development of a forwarding and return mail restructuring plan, the purpose of which is to improve the services provided by (1) giving the mailer the opportunity to improve the accuracy of mailing lists by providing address corrections whenever feasible; (2) decreasing the volume of undeliverable-as-addressed mail; and (3) executing delivery of forwarded mail without charge to the recipient, whenever appropriate.

After careful consideration of all of the comments received by the Postal Service, portions of this plan, where appropriate, were submitted to the

Postal Rate Commission for inclusion in the Domestic Mail Classification Schedule. As noted above, those proposals were recommended by the Commission, following hearings, and established as permanent changes by the Governors, therefore, those classification changes are not subject to substantive comment in this rulemaking. However, we do seek comment on the incorporation of those classification changes into postal regulations. Specific areas where substantive comments are requested are identified with an asterisk (*) in the detailed description that follows.

Retention Period for Change of Address

The Postal Service will continue to retain Form 3575, *Change of Address - Order*, for a period of eighteen months, for all classes of mail. The additional six months retention of change of address information provides mailers an opportunity to enhance their mailing list maintenance practices. Generally, this is accomplished by providing the mailer with the customer's new address or the reason for nondelivery of most mail matter received at the old address from the beginning of month thirteen through month eighteen. However, this approach will not apply, at the current time, to Express Mail and First-Class Mail. The forwarding period for those classes has been extended to eighteen months for a temporary period, not to exceed three years beginning October 22, 1983, and terminating October 21, 1986. At the end of this period, forwarding of Express Mail and First-Class Mail will automatically revert back to twelve months.

Address Correction

When a correction is provided incidental to the return of the mail piece, the address correction fee will no longer be assessed. Only when a separate correction notice is provided will the 30 cent correction fee be charged.

Express Mail

The forwarding and return of Express Mail will be the same as First-Class Mail.

First-Class Mail

General

All First-Class Mail (including Priority Mail and postal and post cards) covered by change of address order (permanent or temporary) will be forwarded at no charge for a total of twelve months from the effective date of the request. (Exception: as noted above, during the period of October 22, 1983 through

October 21, 1986, First-Class Mail will be forwarded for eighteen months.) After October 21, 1986, all First-Class Mail will be returned in months thirteen through eighteen. Currently, heavier weight pieces (Priority Mail) do not receive free forwarding and post and postal cards are not returned.

Authorized Endorsements

1. *Address Correction Requested.* During months 1-18, the mail piece will not be forwarded at anytime when this is the only endorsement on the piece. It will be returned to the sender at no charge with the new address information or the reason nondelivery annotated on or attached to the mail piece. First-Class Mail endorsed *Do Not Forward* will be treated as through endorsed *Address Correction Requested*.

2. *Forwarding and Address Correction Requested.* The mail piece will be forwarded during months one through twelve (after October 21, 1986). The new address information will be provided separately to the mailer and the address correction fee will be charged. During months thirteen through eighteen (after October 21, 1986), all mail will be returned to the sender at no charge with the new address or the reason for nondelivery placed on the piece.

Temporary Change of Address

All First-Class Mail associated with a temporary change of address order will be forwarded during months one through twelve (after October 21, 1986). At no time will an address correction be provided to the mailer.

Second-Class Mail

General

*All second-class mail will be forwarded nationwide, at no charge, for 60 days from the effective date of the change of address order. The current distinction between local and non-local forwarding will be eliminated.

An address correction notice will be issued to the publisher *once* if an issue of the publication bearing the old address is received after the 60-day forwarding period has expired. (Exception: Address Change Service (ACS) participants may receive Form 3579 on day one or day sixty-one of the forwarding period.) The mailer is charged the address correction fee for the notification. The Postal Service will continue to properly dispose of all subsequent issues received after the expiration of the forwarding period.

Authorized Endorsement

Return Postage Guaranteed. Upon expiration of the 60-day nationwide forwarding period, the entire publication will be returned to the mailer with the new address or the reason for nondelivery attached. The mailer will be charged the applicable third-class or fourth-class rate for return of the publication. No address correction fee will be charged.

Temporary Change of Address

*When a temporary change of address is filed, second-class mail will be forwarded up to 60 days from the effective date of the change of address order. Issues received after day sixty will be disposed of as prescribed by the Postal Service. The Postal Service will resume delivery of second-class mail to the customer's permanent address at the end of the temporary forwarding period. At no time will an address correction be provided to the mailer.

Third-Class Mail

General

*Generally, mailer endorsements would control the handling of the mail piece and the need for postal employees to make an obvious value distinction would be eliminated for all third-class mail.

*No forwarding or return service will be available for unendorsed bulk business mail (bulk third-class mail). All undeliverable-as-addressed bulk mail pieces will be properly disposed of by the Postal Service. Unendorsed single-piece third-class mail will be returned to the mailer at the single-piece third-class rate and treated as though endorsed *Do Not Forward, Address Correction Requested, Return Postage Guaranteed*.

Authorized Endorsements

1. *Do Not Forward, Address Correction Requested, Return Postage Guaranteed.* During months one through eighteen the new address or the reason for nondelivery will be placed on the mail piece. It is then returned to the sender; forwarding is not attempted. The mailer pays the single-piece third-class rate only. No fee is assessed for the address correction information.

2. *Address Correction Requested.* The mail piece will not be forwarded. An address correction with the new address or the reason for nondelivery will be provided to the mailer. If the piece is returned, only the appropriate return postage rate will be charged—the address correction fee is not charged when the correction is incidental to return of the piece. If, due to weight

constraints, the piece is not returned, a separate address correction notice will be provided, the address correction fee will be charged and the piece will be properly disposed of by the Postal Service.

*3. *Forwarding and Return Postage Guaranteed.* The mail piece will be forwarded to the recipient at no charge. If the piece is undeliverable, it will be returned to the mailer with the reason for nondelivery attached. The mailer pays the appropriate single-piece third-class rate for the rate multiplied by 2.733. This factor is derived from the ratio of the number of third-class pieces nationwide, endorsed for forwarding and return treatment, that are successfully forwarded to the number of those pieces that cannot be forwarded and are returned.

The derivation of the proposed factor of 2.733 was made by Postal Service witness Caridi in his testimony before the Postal Rate Commission. Using Fiscal Year 1981 data, he found that, of the undeliverable-as-addressed third-class mail endorsed *Forwarding and Return Postage Guaranteed* or *Address Correction, Forwarding and Return Postage Guaranteed*, 36.59 percent was returned and 63.41 percent was forwarded. This yields a ratio of 1.733 pieces forwarded to every one returned. The factor derived from this ratio is 2.733.

No separate fee would be charged for the address correction provided when a piece is returned.

*4. *Forwarding and Return Postage Guaranteed and Address Correction Requested.* The mail piece will be forwarded to the recipient at no charge. If forwardable, a separate address correction notice will be sent to the mailer and the address correction fee will be assessed. If the piece is undeliverable, it will be returned to the mailer with the reason for nondelivery attached. The mailer pays the appropriate single-piece third-class rate of the piece multiplied by the 2.733 factor.

*5. No attempt will be made to forward or return bulk third-class mail carrying the endorsement *Do Not Forward* only. It will be properly disposed of by the Postal Service.

Insurance

If the mailer insures a mail piece, but indicates no other endorsement, the piece will be treated as though endorsed: *Forwarding and Return Postage Guaranteed*.

Fourth-Class Mail

General

"The obvious value distinction will also be eliminated for fourth-class mail. The recipient will continue to be provided free local forwarding for one year. For forwarding purposes, local means within the same single ZIP Coded or multi-ZIP Coded post office. Forwarding outside of the local area will be provided only if the recipient guarantees the postage due upon completion of Form 3575, *Change of Address Order*. If the recipient guarantees forwarding postage, the Postal Service will attempt delivery of each piece of fourth-class mail.

Authorized Endorsements

1. *Forwarding and Return Postage Guaranteed.* The mail piece will be forwarded locally, at no charge, for twelve months. Mail will be forwarded non-locally with postage due charged to the recipient. If the mail piece is not deliverable due to the lack of a new address or the recipient has not guaranteed or refuses to pay forwarding postage, the mail will be returned to the sender. The new address or the reason for nondelivery will be attached to all return mail when appropriate. No fee will be assessed for the correction information. However, the mailer will be charged both for the return of the mail piece and the attempt made to forward the article.

2. *Address Correction Requested.* During months one through twelve the new address or the reason for nondelivery is provided to the mailer separately and the mail piece is forwarded, if possible (non-local forwarding postage is charged to the recipient). The address correction fee will be charged for the separate correction notice. If delivery cannot be executed, the mail piece will be returned to the sender with the new address attached and the appropriate return postage will be charged. During months thirteen through eighteen the mail is returned to the sender with the new address attached. Return postage will be charged to the mailer.

3. *Forwarding and Return Postage Guaranteed, Address Correction Requested.* The mail piece will be forwarded free locally, for twelve months. Mail is forwarded non-locally with postage due charged to the recipient if the recipient has guaranteed payment. If the mail is forwarded, a separate address correction notice will be sent to the mailer and the address correction fee will be charged. If the forwarded mail piece is not deliverable, it will be returned to the sender who

will be charged both for the return of the mail piece and the attempt made to forward the article. If the piece cannot be forwarded, due to the lack of a new address or the recipient has not guaranteed to pay forwarding postage, it will be returned to sender with the new address or the reason for nondelivery placed on the mail piece. In such a case, no fee will be assessed for the on-piece address correction information provided.

4. *Do Not Forward, Address Correction Requested, Return Postage Guaranteed.* The mail piece is not forwarded. The new address or the reason for nondelivery will be placed on the mail piece. The article will be returned to the sender and the appropriate return rate will be charged. The address correction fee will not be charged.

* 5. Unendorsed fourth-class pieces of mail will be treated as though endorsed *Forwarding and Return Postage Guaranteed*. The mailer will be charged the appropriate rate for the service(s) provided.

Insurance

Insured pieces of fourth-class mail, without any other endorsement, will be treated as through endorsed *Forwarding and Return Postage Guaranteed*.

Miscellaneous

Mail which bears an endorsement that is not an authorized endorsement for the appropriate class of mail or that does not clearly indicate the action wished by the mailer will be treated as through endorsed *Do Not Forward, Address Correction Requested, Return Postage Guaranteed*.

In the 1981 Federal Register notice, the Postal Service proposed to offer the customer an option to extend the forwarding of First-Class Mail, Express Mail and fourth-class mail beyond the normal forwarding period. Under this extended forwarding option, the recipient would pay a fee to have mail forwarded on a six-month basis. No action is being taken on this option at this time. It will be reviewed when the current temporary 18-month forwarding of Express Mail and First-Class Mail end in October, 1986.

In order to implement the above changes, the Postal Service proposes the following specific changes to the regulations contained in the Domestic Mail Manual:

159.133—Changed to indicate that the forwarding period will vary according to the class of mail used.

Exhibit 159.151—Changed to reflect the new forwarding and return procedures.

159.212—Reflects changed forwarding of fourth-class mail.

159.22—Conforms this section on forwarding of mail to the changes noted above.

159.23—Reflects elimination of the obvious value approach to forwarding parcels and stresses that the sender will determine the treatment his mail is to receive.

159.24—Reflects general changes for each class of mail and identifies when additional postage is charged.

159.25—Reflects elimination of the obvious value approach to forwarding parcels.

159.31—Includes provisions identifying the address change service option for address correction service for second-class publishers. Also clarifies when address corrections will be provided to publishers.

159.33—Reflects changes in the return of First-Class Mail.

159.4 and 159.5—Changes regulations on disposition of matter found loose in the mail to reflect the elimination of the obvious value approach to forwarding of third- and fourth-class mail and the change in the return of First-Class Mail.

290—Incorporates specific Express Mail changes.

390—Incorporates specific First-Class Mail changes.

490—Incorporates specific second-class mail changes.

690—Incorporates specific third-class mail changes.

790—Incorporates specific fourth-class mail changes.

An abbreviated comment period is provided for this proposed rule because of the need to finalize regulations necessary to implement the forwarding and return and address correction classification changes established by the Governors of the Postal Service. These implementing regulations must be published by the February 17, 1985, effective date set by the Board of Governors for the classification changes. The Postal Service believes that any problems that might otherwise be associated with these shortened periods for comment and for implementation are ameliorated by the previous public airing and consideration of the Postal Service's plans for changes in forwarding and return and address correction services. As noted above, a previous proposed rule was published for comment on this matter in 1981. Additionally, the proposed classification changes were filed with the Postal Rate Commission in Docket No. R84-1, were discussed in Postal Service testimony and were subject to hearings in which interested parties could participate. Furthermore, the Postal Service will give consideration to any comments received after the comment period for possible inclusion in later revisions to the subject regulations.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(6)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments, within the limitations on the

nature of the comments requested, on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111 Postal Service.

PART 111—[AMENDED]

1. In 159.1, revise .133 to read as follows:

159.1 Mail Undeliverable-As-Addressed.

.13 Undeliverable Due to Postal Service Adjustments.

.133 Disposition of Mail. Mail which is undeliverable due to Postal Service adjustments will be redirected and, if necessary, forwarded to the destination without an additional postage charge (from the end of the month in which the postal change occurs), for the appropriate forwarding period as specified by the class of mail. *Exception:* Simplified address (boxholder) mail addressed to Rural Route Boxholder, Highway Contract Route Boxholder, or Post Office Boxholder, will not be redirected and forwarded free of charge until the next June 30, after the change in service or until 90 days after the change in service, whichever is later.

2. In 159.1, revise Exhibit 159.151 to read as follows:

BILLING CODE 7710-12-M

FORWARDING					RETURN				
EXPRESS MAIL, FIRST-CLASS POSTAL/POST CARDS	SECOND-CLASS	THIRD-CLASS BULK BUSINESS MAIL	SINGLE-PIECE RATE	FOURTH-CLASS	VALID UAA ENDORSEMENTS				
A	F	I	E	M	NO ENDORSEMENTS				
E	F	E	E	M/C	ADDRESS CORRECTION REQUESTED				
D/C	F	A/C	A/C	M/C	FORWARDING & ADDRESS CORRECTION REQUESTED				
A	F	E	E	D	RETURN POSTAGE GUARANTEED				
E	E	E	E	E	DO NOT FORWARD/ADDRESS CORRECTION REQUESTED-RETURN POSTAGE GUARANTEED				
A	F	A	A	M	FORWARDING AND RETURN POSTAGE GUARANTEED				
A/C	F	A/C	A/C	M/C	FORWARDING AND RETURN POSTAGE GUARANTEED- ADDRESS CORRECTION REQUESTED				
A	-	A	A	M	INSURED MAIL				

Note: When a return address has not been provided on undeliverable

*Postal and post cards, they will be properly disposed of by the Postal Service.

UAA MATRIX

KEY

- A - Forward at no charge
- B - Return to sender endorsed with address correction or reason for non-delivery attached, at no charge. Do not provide temporary change of address information.
- C - send separate address correction notice to mailer. Collect address correction fee.
- D - Forward mail piece, if appropriate.
- E - Do not Forward.
- F - For 60-Day Period forward at no charge.
- G - Provide address correction or reason for non-delivery as well as the old mailing address to the sender. Collect address correction fee.
- H - Return entire piece with the address correction attached or reason for non-delivery. Collect appropriate postage. Address correction fee is not charged.
- I - Do not Forward - Do Not Return.
- J - Do not forward. Return entire mail piece with address correction or reason for non-delivery attached. No correction fee is charged. Charge appropriate rate for return of piece.
- K - Third Class over 1 oz: Return Form 3547 to mailer. Charge the address correction fee.
Third Class under 1 oz: Return entire piece with address correction or reason for non-delivery attached. Charge the appropriate third or fourth class single piece rate. No address correction fee is charged.
- L - Return entire piece to mailer if undeliverable with address correction information or reason for non-delivery attached. Mailer is charged the appropriate single piece return rate.
- M - Forward locally free - 12 months. Forward non-locally for 12 months only if the recipient has guaranteed forwarding postage.
- N - If recipient refuses to pay postage due or the piece is undeliverable, it is returned to the mailer with on-piece address correction information or the reason for non-delivery attached. Mailer is charged both the forwarding (where attempted) and return fees.
- O - After 60 day period, send separate address correction notice to mailer or reason for non-delivery along with the customers old mailing address. Collect address correction fee.

Exhibit 159.151 - Treatment of Undeliverable as Address Mail

BILLING CODE 7710-12-C

3. In 159.2, revise .212, .221, .222, .224, .225, .226, .23, .24 and .25 to read as follows:

159.2 Forwarding.

.21 Change of Address Order.

.212 Guarantee to Pay Forwarding Postage. When completing form 3575, the addressee has the option of guaranteeing to pay forwarding postage on fourth-class mail. Even if the addressee agrees to pay forwarding postage for fourth-class mail, he is not required to accept each article; it is his option to refuse any piece of fourth-class mail. Such refusal shall not revoke the original request to have fourth-class mail forwarded. However, if the addressee wishes to revoke his original guarantee to pay forwarding postage for fourth-class mail, he must request the postmaster to send Form 3546, *Notice to Change Forwarding Order*, to the postmaster at the old address requesting that the forwarding of fourth-class mail be discontinued.

.22 Forwardable Mail.

.221 Classes. The following classes of mail will be forwarded.

a. First-Class Mail (including zone rated Priority Mail), post and postal cards.

b. Express Mail.

c. Official mail (described in 137) that is sent as First-Class Mail.

d. Second-class mail.

e. Third-class mail when the sender has guaranteed to pay the forwarding postage.

f. Fourth-class mail when the recipient or the sender has guaranteed to pay the forwarding postage.

.222 Registered, Certified, Insured, and COD Mail. A change of address order will cover registered, certified and COD mail unless the sender has given other instructions or unless the addressee has moved outside of the United States. The sender's instructions should be written or printed on the envelope or wrapper. Examples: *Do not forward; If not accepted within — days return to sender. Exceptions.*

a. COD mail will not be forwarded to overseas military post offices.

b. Insured and COD parcels that have mailers' instructions to abandon or to sell perishable items, written or printed on the envelope or wrapper, will be treated according to the instructions. Examples:

Do not forward or return. If not accepted within — days, treat as abandoned. Notify mailer of final disposition.

Do not forward or return. If undelivered after — days, sell contents to highest bidder and remit proceeds, less commission, to mailer.

Do not forward or return. If undelivered after — days, destroy. Notify mailer of final disposition.

A commission of 10 percent, but not less than 25 cents, is retained by the Postal Service from the amount for which perishable items are sold.

c. COD mail may have written or printed on it a request that it be forwarded to a new addressee. The name and address of the new addressee must be shown in a bordered space with instructions that the mail be delivered either with or without the collection of COD charges.

d. Insured third-class mail without any other endorsement will be treated as if endorsed *Forwarding and Postage Guaranteed*. It will be forwarded, and, if still undeliverable as addressed, will then be returned to the sender with the new address or the reason for nondelivery attached.

e. Insured fourth-class mail without any other endorsement will be forwarded at no charge locally and postage due non-locally if the recipient has guaranteed to pay forwarding postage on Form 3575. (For forwarding purposes, local is defined as being within the same single ZIP Code or multi-ZIP Code post office). If the article is undeliverable, it will be returned to the sender with the new address or the reason for nondelivery. The mailer will only be charged for the return of the mail piece and the attempted forwarding, when appropriate.

.224 Change in Post Office Service.

a. Addressed to a Discontinued Post Office. All Express Mail, First-, second-, and fourth-class mail and all single piece rate third-class mail addressed to a discontinued post office may be forwarded to any other post office designated by the addressee without additional charge when the office to which the mail is sent by order of the Postal Service is not convenient for the addressee.

b. Forwarded Due to Change in Rural Delivery Service. Customers of any office who on account of the establishment of or a change in rural delivery service, receive their mail from the rural carrier of another office may have their Express Mail, First-, second- and fourth-class mail and single piece rate third-class mail sent to the later office and delivered by rural carrier without a new prepayment of postage, provided they file a written request with the postmaster at the former office.

.225 Address Changes of Persons in U.S. Service. All Express Mail, First-, second-, and fourth-class mail and all single piece rate third-class mail addressed to persons in the United States serving at any (civil and military) place where the United States mail service operates, whose change of address is caused by official orders, will be forwarded until it reaches the addressee except when prohibited by sender's endorsement. No additional postage will be charged. Second- and fourth-class mail, single piece third-class mail, and first-class zone rated (Priority) mail being forwarded are endorsed by the forwarding office *Change Of Address Due to Official Orders*. This provision for free forwarding, from one post office to another applies to mail for the members of the household whose change of address is caused by official orders to persons in the United States service. (See 122.814 and 122.824 concerning dependents residing with military personnel). *Exception:* Second-class mail will not be forwarded between the U.S. and overseas APO addresses by military authorities. Copies of publications addressed to an APO for military personnel transferred to overseas assignments will be endorsed by military personnel *Forwarding Prohibited, Addressee Assigned Overseas* and returned to the post office for disposition. Copies of publications addressed to military personnel at their APO addresses who have been transferred to the U.S. will be endorsed by military personnel *Forwarding Prohibited, Addressee Returned to the U.S.* and returned to the military post office for disposition. Second-class mail having **FPO** addresses may be forwarded to or from the U.S. and overseas for a period not to exceed 60 days when requested by individual addressees.

.226 Reforwarding. The address (but not the name) may be changed and the mail forwarded as many times as necessary to reach the addressee.

.23 Sender Instructions.

.231 The sender of third- and fourth-class mail may identify pieces which are considered valuable and assure their return by using the *Return Postage Guaranteed* endorsement. To assure forwarding and return of mail, the sender must use the *Forwarding and Return Postage Guaranteed* endorsement.

.232 Disposition. Unendorsed single piece rate third- or fourth-class mail that bears a return address will not be disposed of as waste, or sent to dead mail or dead parcels branches. Dependent upon the class of mail, it will

be forwarded to the addressee or returned to the sender. If a piece cannot be forwarded, it will be returned at the applicable rate.

24 Postage for Forwarding. Mail forwarded may be subject to additional postage as noted below, to be computed the same as if the piece were originally mailed at the office from which it is forwarded:

a. First-Class Mail, including zone rate (Priority Mail), post and postal cards, is forwarded without charge when the appropriate postage has been fully prepaid by the sender.

b. Second-class publications are forwarded without charge for 60 days when postage has been fully prepaid by the sender.

c. Third-class mail is subject to collection of additional postage from the mailer when forwarding and return service is provided. Mail that qualifies for a single piece fourth-class rate under the provisions of 611.12 will be returned at that rate if the mailer's address correction service endorsement specifies the fourth-class rate. For example, if a third-class piece qualifies for mailing at the special fourth-class rate for books, the endorsement would be *Special Fourth-Class Rate Forwarding and Return Postage Guaranteed*.

d. Fourth-class mail is subject to the collection of additional postage for non-local forwarding at the applicable rate. This forwarding option must be guaranteed by the sender or recipient. All fourth-class mail will be delivered as directed when the old and new addresses are served by the same single ZIP Coded or multi-ZIP Coded post office. Additional postage is not required.

e. Registered, certified, insured, COD, and special handling mail is forwarded without the payment of additional special service fees, but the ordinary forwarding postage charges, if any, must be paid. Such mail will not be forwarded to a foreign country. See 915.6 for forwarding of special delivery mail.

f. Express Mail is forwarded without the payment of additional fees.

25 Directory Service.

251 Availability. Directory service is not generally available, but at carrier offices where a directory is available, directory service is given to registered, certified, insured, COD, special delivery and special handling mail; to perishable matter and to international mail, except circulars. Incorrectly or incompletely addressed mail from overseas Armed Forces is given directory service and is not returned to the sender until every effort is made to deliver the article.

252 Mail Entitled to Directory Service. Directory service will be

provided at letter carrier offices for the following types of mail which cannot be delivered due to insufficient address or which cannot be delivered at the address given. A city or telephone directory will be used. The Postal Service will not compile a directory of any kind. Those types of mail are:

- a. Certified.
- b. COD.
- c. Foreign mail, except foreign circulars.

Note.—Foreign mail bearing Letter-Class postage received in quantities, and having the general characteristics of circular mail, must not be given directory service.

- d. Insured.
- e. Mail for overseas Armed Forces. Do not return this mail to sender until every possible effort has been made to deliver the article.

- f. Parcels mailed at any single piece third-class or fourth-class rate or endorsed by the mailer.

- g. Perishable matter.
- h. Registered matter.
- i. Special delivery.
- j. Special handling.
- k. Official Postal Service mail.

1. Express Mail Next Day Service (Post Office to Addressee only).

4. In 159.3, revise the title, 31 and .331 to read as follows:

159.3 Address Correction Service, Address Change Service and Return

.31 Address Correction Service

.311 Availability. If mail cannot be delivered as addressed to the recipient, the mailer may obtain the new (forwarding) address of the recipient if known by the Postal Service, or the reason for non-delivery by requesting address correction service. Address correction service (including address change service) is provided automatically after 60 days for all second-class publications from the effective date of the recipient's change of address order. Address corrections are available "on piece" at no charge or separately, for a fee, at the mailer's request. Whenever possible, "on piece" address corrections will be provided for First-Class Mail, Express Mail, Priority Mail, third-class and fourth-class mail. If the piece cannot be forwarded, it will be returned with the address information or the reason for nondelivery attached at no charge. Generally, when separate corrections are necessary, Form 3547, *Notice to Mailer of Correction to Address*, will be returned to the sender with the address correction fee charged and the mail will be forwarded. This service is not available for Express Mail, First-, third-, or fourth-class mail addressed for delivery to the addressee

by military personnel at any military installation including APOs and FPOs. Address correction service is available alone or in combination with the forwarding and return services in 159.2 and 159.33.

.312 Address change service (an address correction service option) is available to second-class mailers only. This service allows the mailer to obtain a customer's correct address or the reason for nondelivery via magnetic tape. This service is available weekly or monthly dependent upon the mailer's requirements. Address change service is presently available only through the larger computerized forwarding sites.

.313 Endorsement. To request address correction service, the endorsement *Address Correction Requested* should be used.

.314 Fee. The fee for address correction service (including address change service) is \$0.30 for each separate notification of address correction or the reason for nondelivery. Generally, when "on-piece" address corrections can be provided, no fee will be charged.

.33 Return.

.331 Availability of Return Service. Undeliverable-as-addressed Express Mail and First-Class Mail (including zone-rated Priority Mail and post and postal cards), which cannot be forwarded or cannot be delivered as addressed, is returned to the sender at no additional charge, whenever possible. Mail of other classes may be returned to the sender if it bears the endorsement *Return Postage Guaranteed*. This service is available alone or in combination with forwarding and address correction services. The particular provisions governing return for each class of mail are contained in the appropriate chapters of this manual for each class of mail.

5. In 159.4, revise .411 and .412 d and m to read as follows:

159.4 Disposition of Articles Found Loose in the Mail.

.41 Treatment at Local Postal Facility.

.411 Opening and Examination. With the exception of unendorsed bulk business mail (third-class bulk mail), all undeliverable third- and fourth-class mail which cannot be returned because of an incorrect, incomplete, illegible or missing return address will be opened and examined to identify the sender or addressee. This includes matter mailed under 913.122 (insured First-Class

parcels containing third- or fourth-class enclosures).

159.412 Disposition of Undeliverable Mail. Mail that remains undeliverable after examination, where applicable under 159.411, is disposed of as follows:

d. Unendorsed third-class mail, with the exception of articles mailed at the single piece rate, is disposed of as waste.

m. Third-class single piece rate mail and fourth-class mail which cannot be forwarded or returned, and all Express Mail and First-Class Mail, is sent to a dead letter branch or dead parcel branch for disposition.

6. In 159.5, revise .521 a and b to read as follows:

.52 Treatment at Last Office of Address.

.521 Disposition. At the end of retention periods specified in 159.332 and .333, mail is declared dead. Dead mail described in 159.412 a through f is disposed of locally. First-Class letters, First-Class parcels, sender endorsed third-class mail, third-class single-piece rate mail and fourth-class articles are forwarded on fixed schedules to dead letter or dead parcel branches for final disposition. Dispose of as follows:

a. First-Class Mail.

(1) Office with 950 or more revenue units. Send dead letters to your dead letter branch daily. Send dead First-Class parcels to your dead parcel branch weekly.

(2) Other Offices. Send dead letters to your dead letter branch and dead First-Class parcels to your dead parcel branch weekly.

b. Third- and Fourth-Class Mail. Hold third- and fourth-class parcels for 30 days after they become dead. Then send them to the proper dead parcel branch weekly.

7. In 290, revise 291 and 292.2 to read as follows:

PART 290—ANCILLARY SERVICES EXPRESS MAIL

291 Forwarding. Express Mail is forwarded nationwide for a period of one year when the new address is known. Pieces forwarded are handled and transported as Express Mail. No additional postage is collected for forwarding.

Exception: For the period beginning October 22, 1983 and ending October 21, 1986, the Postal Service will provide forwarding of Express Mail for eighteen months at no additional charge as an aid

to mail or efforts to improve the quality and accuracy of their address lists.

292 Return and Address Correction.

292.2 Address Correction Service.

An Express Mail piece bearing the endorsement *Address Correction Requested* will be returned to the sender with the new forwarding address or the reason for non-delivery provided at no charge. When the *Forwarding and Address Correction Requested* endorsement is used, the mail piece will be forwarded to the new address, and the sender notified on Form 3547, *Notice to Mailer of Correction in Address*. Temporary changes of address are not provided. See 215 for the address correction service fee.

8. In 390, revise 391 and 392 to read as follows:

PART 390—ANCILLARY SERVICES FIRST-CLASS MAIL

391 Forwarding.

391.1 All Mail Pieces. All First-Class Mail, including zone rated (Priority) mail, postal and post cards, is forwarded at no charge for a period of one year when the new address is known.

391.2 Exception to Forwarding Period. For the period beginning October 22, 1983, and ending October 21, 1986, the Postal Service will provide forwarding of First-Class Mail for eighteen months as an aid to mailer efforts to improve the quality and accuracy of address lists.

392 Return and Address Correction.

392.1 Return. All First-Class Mail, including Priority Mail, postal and post cards, that cannot be delivered as addressed and cannot be forwarded is returned to the sender with the reason for non-delivery attached, at no charge. Any postage due because of failure to fully prepay postage at the time of mailing will be collected from the sender when the undeliverable mail is returned.

392.2 Address Correction Service. First-Class Mail bearing the endorsement *Address Correction Requested* will be returned to the sender with the new address of the recipient or the reason for nondelivery attached at no charge. When the endorsement *Forwarding and Address Correction Requested* is used, the mail piece will be forwarded to the new address, and the sender will be notified on Form 3547, *Notice to Mailer of Correction in Address*. Temporary changes of address are not provided. Forwarding address information will not be provided for

mail bearing the exceptional address format. The address correction service fee (see Exhibit 310f) will be charged.

9. In 490, revise 491, 492.2 and 493 to read as follows:

PART 490—ANCILLARY SERVICES

491 Forwarding.

Local and Non-Local Change of Address. When there has been a change of address, copies of second-class publications bearing the old address will be delivered to the new address without charge for 60 days from the effective date of the recipient's change of address order. This procedure will be followed whether or not the copies bear the sender's request for return. Form 3576, *Change of Address Notice to Correspondents, Business and Publishers*, will be available to the addressee. No forwarding postage will be charged on second-class mail during the 60-day period.

492 Address Correction Service.

492.2 Sending Notification. Address correction service (including address change service) will be provided for the first issue after 60 days for all publications unless copies are to be returned under section 493. Address change service participants may receive the change notice prior to day 60, if so requested. The new address of the recipient or the reason for non-delivery will be provided. Copies received after the address correction notice is mailed will be disposed of by the Postal Service. When copies of the publication cannot be forwarded, the address correction notice will be prepared for the first undeliverable issue of the publication received.

493 Return.

The publisher may request that copies of second-class publications which are undelivered be returned if the publisher guarantees to pay the return postage. To receive this service, the endorsement *Return Postage Guaranteed* must be printed on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name and address, including either the ZIP+4 code or the 5-digit ZIP code. The per piece rate charged for return is the single-piece third- or fourth-class rate. When the address correction is provided incidental to the return of the piece, there is no charge for the correction.

10. Revise 690 to read as follows:

PART 690—ANCILLARY SERVICES

691 Forwarding and Return.

691.1 No forwarding or return service is provided on bulk business mail (third-class bulk mail) without an endorsement. Unendorsed single piece third-class mail will be returned if undeliverable.

691.2 Insured third-class mail will be treated as though endorsed. *Forwarding and Return Postage Guaranteed*.

691.3 Undeliverable third-class mail bearing the endorsement *Forwarding and Return Postage Guaranteed* will be forwarded for 12 months when the new address is known. No forwarding fee will be charged to the recipient. During months 13-18, the piece will not be forwarded but will be returned with the correct forwarding address or the reason for non-delivery attached.

691.4 If the endorsement *Forwarding and Return Postage Guaranteed*, and *Address Correction Requested* is used, the mail will be forwarded for the first 12 months if the forwarding address is known and a separate address correction notice (Form 3547) will be sent to the mailer and the appropriate address correction fee will be charged (see 612.2). No forwarding fee will be charged the recipient. If the piece is not forwardable, it will be returned. During months 13-18, the piece will be returned with the correct forwarding address or the reason for non-delivery attached (see 692).

691.5 Whenever the mail piece is returned to sender as outlined in sections 691.2 through 691.4, the mailer will pay the appropriate single piece rate multiplied by a factor of 2.733 derived from the ratio of the number of third-class pieces nationwide that are successfully forwarded to the number of these pieces that cannot be forwarded and are returned. There is no charge for the on-piece address correction provided.

692 Return.

Bulk business mail which cannot be delivered as addressed and bears the endorsement *Do Not Forward, Address Correction Requested, Return Postage Guaranteed* will not be forwarded but will be returned at the appropriate single-piece rate with an address correction or the reason for nondelivery attached at no charge. Unendorsed bulk business mail will not be returned. Unendorsed single piece third-class mail which cannot be delivered as addressed will be returned to the sender at the appropriate single piece rate with the reason for non-delivery attached at no charge. Mail which qualifies for a single piece fourth-class rate under the

provisions of 611.12 will be returned at that rate if the mailer's endorsement includes the name of the fourth-class rate.

693 Address Correction.

The recipient's new (forwarding) address, or the reason for non-delivery if the new address is not known, may be obtained by the sender either independently of, or in combination with the return and forwarding services as provided by 691 and 692. To obtain these services, the mailing piece must bear the endorsement: *Address Correction Requested, Forwarding and Return Postage Guaranteed* or *Address Correction Requested*. Temporary changes of address are not provided. Forwarding address information will not be provided for mail bearing the exceptional address format. The following conditions govern this service:

a. Pieces generally weighing 1 ounce or less bearing the words *Address Correction Requested* will be returned to the sender with the new address or the reason for non-delivery endorsed on the piece. Only the appropriate single-piece rate will be charged (see 612.2).

b. For pieces generally weighing more than 1 ounce and bearing only the endorsement *Address Correction Requested, Form 3579, Undeliverable 2nd, 3rd, 4th Class Matter*, or a markup label will be used to notify the sender. *Exception:* When address labels are affixed to plastic wrappers, or a window address format is used on a mailing piece or it is more expeditious for the Postal Service, Form 3547, *Notice to Mailer of Correction in Address*, may be used to provide the requested information.

c. Mail which qualifies for a single piece fourth-class rate under the provisions of 611.12 will be returned at that rate if the mailer's address correction service endorsement includes the name of the applicable fourth-class rate. For example, if a third-class piece qualified for mailing at the special fourth-class rate for books, the endorsement would be: *Special Fourth-Class Rate, Forwarding and Return Postage Guaranteed*.

11. In 790, revise 791, 792.1, 792.2, 793 and 794 to read as follows:

PART 790—ANCILLARY SERVICES

791 Forwarding and Return.

Fourth-class mail will be forwarded locally for one year at no charge. (For forwarding purposes, local is defined as the same single ZIP Coded or multi ZIP coded post office). Non-local forwarding for one year will be provided upon the recipient's guarantee on Form 3575.

Change of Address Order, to pay forwarding postage. Undeliverable fourth-class mail bearing the endorsement *Forwarding and Return Postage Guaranteed* is forwarded when the new address is known. Forwarding postage will be collected from the addressee. The recipient may refuse to pay the forwarding postage on any piece of fourth-class mail and still continue to have other fourth-class mail forwarded. Form 3546, *Notice to Change Forwarding Order*, will only be used if the addressee refuses to pay for forwarding all fourth-class mail and/or requests the postmaster of the new address to notify the postmaster of the old address that they no longer wish forwarding service on fourth-class mail. The single piece rates and conditions are applicable to forwarding and returning of parcels mailed at single piece, presort, and bulk rates. If the piece cannot be forwarded because the new address is not known, it will be given the *Return Postage Guaranteed* service (see 792). During months 13-18, the piece will be returned with the correct new (forwarding) address or the reason for non-delivery attached.

792 Return.

792.1 *Endorsed and Unendorsed Pieces*. All undeliverable fourth-class mail will be returned postage due to the sender, or to the person designated by the sender, with the reason for nondelivery attached. No address correction fee is charged.

792.2 *Pieces Bearing a Meter Stamp*. When fourth-class mail bearing a postage meter stamp of a private mailer is received unaddressed and without return address, and delivery cannot be made, the piece must be returned to the post office of mailing. The reason for nondelivery will be attached without charging the address correction fee. The office of mailing will deliver the piece to the meter licensee on payment of the return postage.

793 Address Correction.

The addressee's new (forwarding) address, or the reason for non-delivery if the new address is not known, may be obtained by the sender either independently of, or in combination with the return and forwarding services provided by 791 and 792. To obtain these services, the mailing piece must bear the endorsement: *Address Correction Requested*, or *Address Correction Requested Forwarding and Return Postage Guaranteed*, according to the service desired. Temporary changes of address are not provided.

The following conditions govern these services:

a. When a piece bears the endorsement *Address Correction Requested*, Form 3579, *Undeliverable 2d, 3d, 4th Class Matter*, or a markup label is used to notify the sender. The address correction fee is charged (see 712.2). Form 3579 or a markup label and the old address portion of the mailing piece will be prepared for mailing to the sender in an envelope, in the same manner that address correction notices are prepared for mailing to second-class publishers. *Exception:* When address labels are affixed to plastic wrappers, or a window address format is used on a mailing piece, making compliance with the foregoing instruction difficult. Form 3547, *Notice to Mailer of Correction in Address*, will be substituted to provide the requested information.

b. If a piece bearing the endorsement *Address Correction Requested, Forwarding and Return Postage Guaranteed* must be returned to the sender by the post office of original address because the piece cannot be forwarded, Form 3579 or a markup label is affixed to the piece, and it is returned to the sender for the applicable single piece fourth-class postage for the piece.

c. If a piece bearing the endorsement *Address Correction Requested or Address Correction Requested, Forwarding and Return Postage Guaranteed*, is forwarded to the addressee in compliance with either the sender's or addressee's guarantee to pay forwarding postage (159.212, .231), then Form 3547 is used by the forwarding post office to furnish the sender with the new address for a fee (see 712.2).

d. Forwarding address information will not be provided for mail bearing an exceptional or address format (122.422).

794 No Service Requested.

If the services described in 791, 792, or 793 are not requested by the mailer, and the piece is undeliverable as addressed, and the period for forwarding and address availability has expired (159.2), then the Postal Service will return the article to the sender and collect the appropriate postage due.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published when the final rule is adopted.

(39 U.S.C. 101(d), 401, 403, 404, 3621, 3625)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-1055 Filed 1-11-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM019DE; A-3-FRL-2756-7]

Proposed Revision of the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This Notice proposes the approval of several revisions to the Delaware State Implementation Plan. The revisions consist of amendments to Regulation No. XVII—Source Monitoring, Record Keeping and Reporting, Regulation No. XIII—Open Burning, Regulation No. XIV—Visible Emissions, and Regulation No. II—Permits. EPA has reviewed these revisions and has concluded that they meet all requirements of the Clean Air Act and 40 CFR Part 51. Therefore, EPA proposes to approve the amendments as revisions to the Delaware SIP.

DATE: Comments must be submitted on or before February 13, 1985.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, Attn.: Patricia Gaughan (3AM11).

Department of Natural Resources and Environmental Control, Division of Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, Attn.: Mr. Robert R. French.

All comments on the proposed revisions will be considered and should be submitted to Mr. David L. Arnold, Chief, Delmarva/DC section (3 AM13) at the EPA Region III address stated above. Please reference the EPA Docket Number found at the heading of this Notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Jacqueline Pine at the EPA Region III address stated above or call 215/597-4554.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1984 the State of Delaware submitted to EPA Region III, Secretarial Orders announcing the adoption of several amendments to their State Regulations. The State requested that these amendments be approved as

revisions of the Delaware State Implementation Plan (SIP). The State provided documentation that a public hearing regarding the proposed changes was held as required by 40 CFR 51.4. The hearing was held on March 28, 1984 in Wilmington, Delaware after adequate public notice was given.

The following items are being proposed as amendments to Delaware's Regulation:

(1) Authorization to require environmental monitoring when waterborne craft or boats engage in the bulk transfer of solid materials in the Delaware Bay.

(2) Elimination of certain burning operations.

(3) Requirement of written approval by the receiving party during the transfer of permits from one party to another.

(4) Deletion of reference to the Ringleman Smoke Chart as a method of determining compliance to the opacity regulation.

(5) Amendment to clarify that all waste oil burners require a permit.

EPA has reviewed these revisions and has concluded they meet all the requirements of the Clean Air Act and 40 CFR Part 51. EPA proposes to approve the revisions to the Delaware SIP based on the review.

Regulation Description

Section 1 of Regulation No. XVII, Source Monitoring, Record Keeping and Reporting, adds a new section authorizing the Department to require the owner or operator of an air contaminant source consisting of ships, boats or other waterborne craft engaged in a bulk transfer operation to provide for the installation, operation and maintenance of environmental monitoring equipment. This amendment will require the owners of such operations to bear the cost of ambient air monitoring activities and will allow the Department to determine the impact of the transfer operations on air quality. The regulation is limited to the transfer of bulk solid material because of the greater air pollution potential inherent in the transfer of solids as compared to liquids.

Regulation No. XIII, Open Burning, is amended to eliminate the requirement of written Department approval for certain open burning activities. Section 2.3, (a) and (b) are added which make exceptions to domestic burning and agricultural operations in the area north of the Chesapeake and Delaware Canal. Section 2.5 shall require all fires to remain under supervision until extinguished and that open burning shall

not cause local nuisance conditions from smoke or odors. Open burning shall be conducted only at certain times under new Section 2.6. Section 2.7 exempts tires, waste oil or oils heavier than No. 2 from being used as auxiliary fuel. Section 2.8 is also added which may not allow open burning for the removal of fire hazards or fire fighting instructions unless approved by the State Fire Marshall.

EPA believes that the deletion of the requirement for a written approval will not have adverse effects on air quality. The amended regulation places several restrictions on open burning to protect air quality and includes regulatory provisions which have been set forth as conditions in air pollution permits.

Section 3.1 of Regulation No. II, Permits, is amended to clarify that the exemption from permit requirements for fuelburning equipment less than 1,000,000 BTU/hr does not apply to the burning of waste oil. Since waste oil has the potential for high concentrations of PCB's and heavy metals such as lead (Pb), the requirement of a permit for waste oil burning would be beneficial. This process will provide the mechanism for oil sampling and analysis and the control of emissions into the air.

Section 8.1 under Regulation No. II, is also amended. This section requires the approval of all affected parties prior to the transfer of any permit from one person to another. Amending this Section will ensure that the party receiving responsibility of any permit agrees to the transfer. This amendment has no impact on air quality.

Regulation No. XIV, Visible Emissions, Section 2.1, is amended to delete any reference to the Ringleman Smoke Chart as a method of determining compliance with opacity standards. The amended regulation allows use of the chart as a guideline for determining the opacity of black smoke. However, Section 1.5(c)(1) of Regulation No. XX, New Source Performance Standards, which is the current EPA test method for visible emissions, must be used in determining compliance with any opacity standard.

EPA Action

EPA has reviewed these changes and believes there will be no adverse effects on air quality if approved. Therefore, EPA proposes approval of these regulatory revisions into the Delaware SIP.

The Regional Administrator's decision to propose approval of these revisions is based on a determination that the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for

Preparation, Adoption and Submittal of State Implementation Plans.

The public is invited to submit comments on the proposed SIP revision. All comments submitted on or before February 13, 1985 will be taken into account in the Administrator's decision to approve or disapprove the revision.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action only approve State actions and imposes no 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.

Authority: 42 U.S.C. 7401-7642.

Date: December 11, 1984.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-986 Filed 1-11-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR CH. I

[CC Docket No. 84-1235; FCC 84-564]

Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Commission invites comments on proposal to adopt guidelines for optional MTS rates and rate structure plans of AT&T and other dominant carriers that the Commission can use to determine whether particular tariff filings will warrant investigation pursuant to 47 U.S.C. 204. The Notice describes several possible alternative standards that might be adopted.

DATES: Comments are due by February 1, 1985 and replies by March 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Regina Keeney, (202) 632-6917.

Notice of Proposed Rulemaking

Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans (CC Docket No. 84-1235).

Adopted: November 21, 1984.

Released: January 9, 1985.

By the Commission: Chairman Fowler issuing statement.

I. Introduction

1. It is essential in exercising our responsibilities under the Communications Act, particularly in guarding against the exercise of market power by AT&T, that we recognize the increase in competitive market forces faced by AT&T, and ensure that our policies are consistent with those forces. We have received an enormous amount of comment and information in a number of our proceedings, suggesting a wide variety of approaches to regulating AT&T during the transition to a more open telecommunications environment. In this docket we do not address the issue of whether AT&T continues to have substantial market power but assume arguendo that it does have sufficient dominance to justify regulatory scrutiny of its MTS offerings.¹ Rather we focus narrowly on how the Commission can most effectively guard against unjust and unreasonable discrimination without unduly impeding strenuous price competition until this Commission reaches any different determination about AT&T's market power. Therefore, our fundamental purpose in this Notice is to seek comment on proposed tariff review principles (rather than practices) that we believe are more compatible with the achievement of our responsibilities and promotion of the competitive process than is the current practice.

2. Recently, the Commission has taken several important actions calculated to enforce Section 202(a) of the Communications Act, 47 U.S.C. 202(a), consistently with the public interest. On April 24, 1984 we released a *Report and Order* adopting new guidelines for evaluating private line tariffs and volume discount practices.² In this proceeding we will attempt to develop similar tariff guidelines for some MTS offerings of AT&T and other dominant carriers. Importantly, in the *Private Line*

¹ Questions relating to dominance and elimination or reform of regulatory scrutiny are being considered in connection with the inquiry into *Long-Run Regulation of AT&T's Basic Domestic Interstate Services (AT&T Inquiry)*, 95 FCC 2d 510 (1983).

² *Private Line Rate Structure and Volume Discount Practices, Report and Order*, CC Docket 79-246, FCC 84-147 (released April 24, 1984).

Rate Structure Order we addressed the pricing principles to be applied to volume discounts.³ Although we did not explicitly endorse any cost standard in that order, we did carefully note the central role cost standards play in competitive analysis. We found there that requiring all private line and special access volume discounts to be justified by a fully distributed cost (FDC) study did not promote the goals of the Communications Act. We did not, however, address the issue of volume discounts for MTS or other switched services, or the application of FDC principles to a broader class of tariff questions.

3. The rapid changes in the telecommunications environment that led us to issue the *Private Line Rate Structure Order* have not abated. The consequences of carrying out the terms of the Modification of the Final Judgment in *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), continued progress toward equal access for all interexchange carriers, as well as the further deregulatory steps that have been taken in our Competitive Carrier Rulemaking⁴ have contributed to the growth of competition. AT&T's response to this growth has placed great strains on our traditional tariff review procedures. In the context of increasing competition, other rules we have adopted to protect consumers and the competitive process may also take on an increased significance. For example, our resale rules will become a more important source of protection against undue discrimination as resale becomes a more established practice. This may permit a lessened emphasis on searching for discriminatory features in tariffs filed by dominant carriers.

4. It is now a matter of some urgency to design tariff guidelines that continue to protect consumers from the exercise of AT&T's market power, protect competitors from anticompetitive actions, and at the same time allow AT&T to price its services in a way that reflects the true economic costs of providing service. Standards that include elements not reflecting the real economic costs of doing business may confound the competitive process we are trying to foster. In short, our tariff review standards during the transition to an open market should be consistent

with the growth of competition, permitting an outcome that is in the public interest.

5. In our *Private Line Rate Structure Order* we stressed the importance of consistency across services of tariffs and having consistently defined rate elements. In this proceeding, we go to a more basic level: consistency of the tariff review process itself with the changing economic realities of the communications industry. We are mindful of the danger that in trying to promote competition we may, in fact, simply control it and predetermine the outcome. Our goal is to be neutral with respect to outcomes, but to ensure openness, and a fair chance for all companies to compete on the same basis.

6. There are several reasons for us now to examine options for alternative MTS rates and rate structures of AT&T Communications (ATCOM) and other dominant carriers.⁵ Earlier this year ATCOM filed its Optional Calling Plan (OCP) tariff by which it would offer an optional MTS service package, marketed as "Reach Out America" but referred to in ATCOM's MTS tariff and herein as the "Block of Time" plan, under a sharply different but overlapping rate structure.⁶ The package is primarily for MTS night and weekend calling. The proposed rate structure includes a subscription fee; usage charges which are insensitive to distance and to initial versus subsequent minutes of usage; monthly payment for a minimum of one hour of calling; a higher charge for the first hour of monthly calling than for subsequent hours; and, for an additional monthly flat fee, a fifteen-percent discount off evening MTS rates for any usage. ATCOM promised to make this offering available nationwide, with delays in some areas because of the need for exchange carriers to develop and provide new billing arrangements to Block of Time customers. This offering also raises questions of cost justification

³ This proceeding specifically addresses dominant carriers' MTS offerings. Our purpose in this proceeding is to develop standards to evaluate "supplemental" MTS rates and rate structures. We assume that the existing MTS rate structure and relationships among rate levels will continue and that these offerings will be supplemented with optional MTS rates. Actual rates are likely to change as a result of cost changes and we shall continue to scrutinize carefully any underlying cost changes. We do not intend to evaluate in this docket what standards should apply to an attempt to change the existing MTS rate structure.

⁴ AT&T Communications: Revisions to Tariffs, F.C.C. No. 203 and F.C.C. No. 1 (Transmittal No. 79), Mimoo No. 4711, released June 8, 1984, *aff'd*, FCC 84-563, adopted November 21, 1984. See also AT&T: Revisions to Tariff F.C.C. No. 263 (MTS), 94 FCC 2d 551 (1983) (tariff revisions implementing, on a limited basis, fifteen Optional Calling Plans).

because the usage charges do not cover ATCOM's corresponding switched access expenses, and the subscription charge may fail to cover ATCOM's payments to exchange carriers for new customer accounts. The Common Carrier Bureau allowed the Block of Time tariff to become effective, but rejected most of ATCOM's arguments supporting the tariff's rates and rate structure. In affirming the Bureau's decision, we stated our commitment to examine by this proceeding options for MTS rates and rate structures.⁷

7. We also understand that ATCOM may soon file tariffs for several other OCPs, with different rates, restrictions, and rate structures. The development of guidelines will help speed tariff review and reduce carriers' uncertainty in preparing MTS offerings. Because of the high probability that additional "supplemental" MTS filings will have to be considered in the near future, we have chosen to focus our attention on the standards which should be used for review of such filings.

8. Although we are using rulemaking proceedings to develop such guidelines, we do not intend to codify such guidelines as rules that would be binding upon carriers or this Commission in the same sense as rules that appear in Title 47 of the code of Federal Regulations. We intend to use these guidelines to assist us in determining whether we should or should not exercise our discretion to institute an investigation of new tariff filings pursuant to Section 204 of the Communications Act, 47 U.S.C. § 204. Although publication of such guidelines should be of assistance to the carriers in determining options that are available to them, compliance with such guidelines will not, of course, ensure that this Commission will not elect to investigate a particular filing and will not automatically lead to the dismissal of a Section 208 complaint challenging particular rates or tariff provisions. Conversely, a carrier decision to file a tariff that does not comply precisely with such guidelines will not automatically lead to the rejection of such a tariff, establish a *prima facie* case that any charge or practice is unlawful, or foreclose this Commission from exercising its discretion to refrain from suspending or investigating a particular tariff filing.

9. Given the increasingly important role economic forces now play in driving marketplace results in the industry, we believe it is both necessary and desirable for the Commission's

⁷ FCC 84-563.

² *Id.* at paras. 32-42.

⁴ See *First Report and Order*, 85 FCC 2d 1 (1980); *Second Report and Order*, 91 FCC 2d 59 (1982); *Fourth Report and Order*, 95 FCC 2d 554 (1983); *Fifth Report and Order*, 40 FR 34824 (September 4, 1984); *Sixth Report and Order*, FCC 84-566, adopted November 21, 1984.

transitional tariffing guidelines to be cast in a manner explicitly embodying the logic of the market. We believe new guidelines should be stated in explicit economic terms and should be grounded in correct economic analysis of relevant market phenomena. It makes little sense to adopt regulatory standards that are inconsistent with market forces or which economic analysis indicates would reduce consumer welfare. At the same time, reliance upon economic analysis ensures that some measure of internal consistency will characterize the guidelines.

10. An aspect of dominant carriers' traditional MTS rate structure which has policy significance is known as geographic averaging.⁸ While traditional MTS charges are distance sensitive, two calls of the same air mileage at the same time are priced the same regardless of possible differences in the costs of supplying those calls. Cost and competitive differences across geographic regions may provide incentives for ATCOM and other dominant carriers to depart from geographic averaging. These departures may take the form of eliminating any geographically-averaged MTS offering, or introducing new MTS offerings (which may themselves be geographically averaged or even distance insensitive) in selected areas. This Notice does not consider arguments for any future geographic deaveraging; we seek to clarify the standards by which we will protect against any immediate geographic deaveraging in dominant carriers' MTS offerings.

11. In light of these reasons for concern about MTS rates and rate structures, we are considering alternative MTS guidelines or standards.⁹ We address the possible choices of certain MTS rate elements by dominant carriers. A traditional MTS rate element is the air mileage between the origination and termination points of the call. We are considering whether optional MTS usage charges may be distance insensitive, or may increase with the air mileage between the call's origination and termination points. Next, two new MTS rate elements introduced by the Block of Time tariff are a

subscription charge and a minimum monthly charge. We propose to allow the carrier flexibility in using these rate elements. In addition, we address the possible use of rate elements to effectuate geographic deaveraging. We are also considering standards for MTS discounts (such as off-peak-time pricing or volume discounts) and MTS packaged offerings (such as tariffs with a subscription charge, a flat fee, and a reduced usage fee). Any such discount or package would be allowed to become effective if the offering would increase the carrier's MTS net revenues compared to an offering without the discount or package. The increase must occur cumulatively over a given period after the offering's effective date. For this analysis, the carrier must specify reasonable assumptions about its demand, costs, and revenues. This test would be applied to the entire discount or package offering rather than to individual components thereof. No such offering could unreasonably restrict customer selection, resale, sharing, or interconnection. Also, all discounts and packages must be made available to all of a dominant carrier's MTS customers on a reasonable schedule.

12. We are also describing several alternatives that might be used. Interested parties may comment on the proposed guidelines or standards and on the policies and market analyses underlying these proposals. We also seek comments on alternative approaches to regulation of dominant carriers' optional MTS offerings.

II. Statutory Requirements

13. Under the Communication Act of 1934, as amended, it is unlawful for a carrier to charge unjust, unreasonable, or unreasonably discriminatory rates. 47 U.S.C. 201-202. Some terms can be identified as unlawful without need for extensive empirical analysis, such as explicit restrictions on use of the service by certain customers or for certain purposes.¹⁰ Other terms require empirical analysis of whether a carrier's rates closely reflect its costs of providing services or meet competition, and judgment on whether they should be treated as satisfying these statutory standards.¹¹ Under our rules, dominant

carriers must show cost-of-service studies for, and the traffic and revenue effects of, their tariff filings. 47 CFR 61.38.

14. Even though cost justification is related to just, reasonable, and not unreasonably discriminatory rates, there are several major difficulties in requiring a close cost justification for all aspects of dominant carriers' rate levels and rate structures in optional MTS plans. First, there are inherent limitations in the detail and accuracy of any cost-allocation methodology given the multiplicity of these carriers' services, their joint and common costs, the complexities of identifying costs related to peak-load capacity, the delay in demand and revenue stimulation by an offering, and the application of alternative service arrangements for efficient network utilization.¹² Despite our efforts to develop and implement an adequate cost-accounting and cost-allocation methodology,¹³ it may be unrealistic to believe that we can scrutinize fully the cost justification for rates pertaining to optional MTS between two points at two different times, pertaining to optional MTS at the same time between two different pairs of points, and so on. While cost analysis will continue to be useful in many aspects of rate regulation, we cannot expect that scrutiny of the cost basis (according to regulatorily-defined costs) for each MTS rate will lead inevitably to just, reasonable, and nondiscriminatory rates.

15. Efforts to use fully-distributed costs to determine rates for an optional MTS offering may produce distortions during the transition to a system of jurisdictional separations rules and access charges that are more precisely cost-based. The continued inclusion of a substantial portion of non-traffic sensitive costs in access charges that are recovered on a usage basis, the absence of peak-off-peak factors in separations and access charge apportionments of traffic sensitive plant, and the use of distance and other weighting factors in separations allocations that may be obsolete, could produce distortions in cost assignments. It would be unrealistic to assume that all

⁸ We recently stated: "Regarding switched services, the Commission will fully and carefully examine the policy implications of any proposed departure from the historic practice of geographic rate averaging." *Private Line Rate Structure Order*, 49 FR 18108 n.9. See also comments and reply comments in CC Docket No. 83-1147 of National Association of Regulatory Utility Commissioners, Rural Electrification Administration, Vermont Department of Public Service, and Rural Telephone Coalition.

⁹ See note 5, *supra*.

¹⁰ See *Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, 83 FCC 2d 187 (1980).

¹¹ See e.g., *American Trucking Ass'n. v. FCC*, 377 F.2d 121, 130 (D.C. Cir. 1966), cert. denied, 390 U.S. 943 (1967); *Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1231, 1229-30 (D.C. Cir. 1980); cert. denied, 451 U.S. 920 (1981); *FPC v. United Gas Pipe Line Co.*, 306 U.S. 237, 243 (1967); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

¹² See *AT&T Inquiry*, 95 FCC 2d at 518. See generally Braeutigam, *An Analysis of Fully Distributed Cost Pricing in Regulated Industries*, 11 Bell J. Econ. 182 (1980).

¹³ AT&T: *Private Line Services (TELPAC)*, Docket No. 18128, 61 FCC 2d 587 (1976), *aff'd sub nom. Aeronautical Radio; AT&T: Manual and Procedures for the Allocation of Costs: Revision of the Uniform System of Accounts and Financial Reporting Requirements of Telephone Companies*, 70 FCC 2d 719 (1978), 88 FCC 2d 83 (1981).

or even most of these distortions can be eliminated in the near future. We have tentatively concluded that the existence of such distortions should be taken into account in the development of guidelines for alternative MTS rates that will be useful in the near future.

16. We also believe that it follows from the statutory requirement of just, reasonable, and not unreasonably discriminatory rates that any cost-justification standard must be applied flexibly. For example, we recently replaced the need for detailed cost justification of private line volume discounts with a broad showing of competitive necessity and a structural approach to strengthen market forces.¹⁴ We found that certain departures from rates based on fully-distributed costs stimulate sufficient demand and revenues that customers of the carrier's other services benefit by lower rates and are not discriminated against. We concluded that a price floor above marginal cost, such as fully-distributed-cost pricing, encourages underutilization of productive resources, impairs competition on the basis of relative efficiency, and harms consumers.¹⁵ Similarly, allowing a dominant carrier to charge a rate between its marginal and fully-distributed costs for providing MTS to certain customers may ensure that some customers who might have turned to alternative sources of supply will help defer that carrier's costs that otherwise would fall on MTS ratepayers with fewer or no alternatives. We believe that the statutory requirements will be served by developing standards for alternative MTS rates and rate structures other than fully-distributed costs although instituting a fully-distributed cost approach is an option.

17. Another reason for departure from close cost justification is that rate structures require a practicable degree of aggregation and rate averaging. Courts and this Commission have recognized that rates pertaining to reasonable groupings of customers or carriers are lawful even though there may be some variations in costs or competition.¹⁶ Simple rate structures

and a few, easily-determined rate elements are particularly important for MTS offerings. The typical MTS customer is less sophisticated in selecting offerings and auditing charges than the typical private line customer. Even if the cost characteristics of individual MTS transmissions could be determined accurately, detailed rate deaveraging would cause complexity and customer confusion which is not warranted by the statutory requirements of just, reasonable, and nondiscriminatory rates.

18. Finally, detailed cost support for all aspects of an MTS offering may impose unnecessary expenses on dominant carriers. These expenses could lead to higher rates paid by consumers, extensive cost-support could delay new offerings, and that burden could impair competition by imposing unnecessary scrutiny of dominant carriers in their rivalry with nondominant carriers. As we noted in the *Competitive Carrier Rulemaking*, "[s]o long as our regulation imposes costs on some firms, and thus on the public, not exceeded by the benefits generated thereby, the provision of communications service by those firms can never be as 'efficient' nor can the charges be as 'reasonable' as they might be in the absence of such artificial costs."¹⁷ Consumers would benefit if we are able to adopt options which check unlawful rates while limiting the cost support required for dominant carriers' alternative MTS tariff filings.

19. We tentatively conclude that the Communications Act supports our attempt to establish MTS rate and rate structure guidelines which reduce our reliance on cost-justification analysis and grant dominant carriers needed flexibility in making competitive MTS offerings. We believe that these carriers can lawfully supplement the existing MTS rate structures they employed over the last several years with new MTS offerings. However, cost analysis may be poorly suited to guide and justify many aspects of these changes because of the unwieldiness of cost accounting, the growth of competitive necessity as a reason for non-cost-based rate differentials, the need for reasonable averaging, and the expense and delay of cost analysis. In the case of ATCOM's private line offerings and the exchange carriers' special access offerings, we found that reliance on rate structure guidelines together with market forces would promote just, reasonable, and nondiscriminatory rates better than would reliance on thorough cost-

justification analysis. We recognize that cost analysis alone may be inadequate as a guide in determining whether this Commission should investigate MTS tariff proposals regarding discounts, overlapping offerings with different rate structures, and other factors. The proposals in this Notice attempt to be forward-looking and to promote, not sacrifice, the statutory requirements of just, reasonable, and not unreasonably discriminatory rates.

III. Rate Elements for Optional MTS Offerings

20. In the *Private Line Rate Structure Order*, we emphasized the public benefits from unbundled, consistently-defined, and consistently-employed rate elements. We found that carriers should select rate elements to reflect market demand for components or packages thereof, pricing convenience for the carrier and customers, and cost characteristics. We also found that a rate element which appears separately in one rate structure should appear separately in all other rate structures.¹⁸ This guideline seeks to facilitate comparison of rate elements in tariff review, help consumers make intelligent choices among available offerings, and enable competitors to obtain the facilities they demand for interconnection and resale. Our objectives and concerns are similar in formulating options for MTS rate elements. For example, we doubt that a single dominant carrier's just, reasonable, and not unreasonably discriminatory MTS offerings would differ in the times for discounts (e.g., one offering with discounts from 5 p.m. to 8 a.m., and another with discounts from 6 p.m. to 8:30 a.m.), or differ in the timing of usage (e.g., one offering with incremental charges based on full minutes of use, and another based on half minutes of use) without adequate explanation or justification. However, we tentatively conclude that there are limited areas for the carrier to file, if it so chooses, overlapping, inconsistent rate elements, as discussed below.

21. *Distance*. Dominant carriers traditionally offered MTS with a rate element for the air mileage between the origination and termination points. Charges increased with this distance, based on a few mileage bands. The conceptual underpinning to this rate element was the simple notion that this distance was directly correlated with dominant carriers' typical transmission costs.

¹⁴ *Private Line Rate Structure Order* at paras. 17-22.

¹⁴ *Private Line Rate Structure Order* at paras. 32-42.

¹⁵ *Id.* at para. 36.

¹⁶ See, e.g., *Private Line Rate Structure Order* at para. 21; *Investigation of Access and Divestiture Related Tariffs*, Docket No. 83-1145, FCC 83-470, released February 17, 1984 [ECA Tariff Order] at 7-12; *American Trucking*, 377 F.2d at 132 ("a utility cannot use a rate structure with levels so minute as to meet every gradation in competitors' prices . . . [A] common carrier must aim at the average."); *Alabama Electric Co-op.*, 684 F.2d at 28-29; *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968).

¹⁷ 85 FCC 2d at 13.

22. Of course, dominant carriers' transmission costs between any two points depend on a number of factors, including the traffic density between those points, their network configurations, and the transmission media used. The bulk of a dominant carrier's costs for supplying MTS do not vary with the air mileage between the origination and termination points of a call. Among the non-distance-sensitive costs are switched access charges, and expenses for billing and collection, advertising, uncollectibles, labor, and other corporate overhead. Also, satellite transmission costs do not vary with distance, and this medium is economical for much long-haul traffic. Non-distance-sensitive (postalized) rates have been adopted by major domestic record carriers, including Western Union Telegraph Co., along with the growth of competition for these services.¹⁹ Postalization simplifies rates and provides pricing convenience for customers and carriers. Given this benefit of postalized rates and because it is difficult to determine the extent to which typical transmission costs vary with distance, the cost averaging inherent in postalized rates may be reasonable.

23. We seek comments on the reasonableness of dominant carriers using optional MTS rates which: (1) increase with the air mileage between origination and termination points; (2) are postalized; or (3) increase with the air mileage between origination and termination points for some offerings and are postalized for other offerings. Under option (1), a carrier would not be tied to the mileage bands or the rate differentials across mileage bands in the traditional MTS offering. Nor would a carrier be expected to supply cost justification for its choice of new mileage bands or rate differentials for optional MTS offerings. Option (3) may provide a reasonable means for carriers to introduce postalized rates. While we generally oppose overlapping, inconsistently-used rate elements in different offerings, option (3) may be a useful transitional approach. Again, any mileage bands used should be consistent across a carrier's optional MTS offerings that employ mileage bands. Comments should present recent factual data pertaining to postalized MTS rates.

24. *Subscription and Minimum Monthly Charges.* Dominant carriers' traditional MTS offerings have involved a rate element for usage charges, but no rate element for a flat charge regardless

of usage. In contrast, ATCOM's Block of Time tariff contains two new flat-charge rate elements, one for subscription to the offering (which was waived during an initial promotional period), and another for up one hour of usage (a minimum monthly charge). These paragraphs consider guidelines regarding use of such new flat-charge rate elements.

25. Regarding customer subscription and termination charges for a particular MTS offering, we recognize that dominant carriers incur costs in initiating some MTS offerings for each new customer when it establishes the necessary billing and collection arrangements.²⁰ Other tariffs contain flat non-recurring charges designed to recover at least part of the customer-initiation costs, and to deter over-ordering of the services by customers (i.e., ordering more of the service than a customer will use and thereby imposing costs on the carrier that it cannot subsequently recover from that customer through usage charges). More generally, we believe that recovering costs directly from cost-causers (e.g., explicit charges for use of directory assistance rather than recovering these costs through MTS usage rates) and recovering non-traffic-sensitive costs through flat charges (e.g., customer line charges) promotes efficiency and equity.²¹ Such flat charges facilitate lower usage charges for customers. On the other hand, excessive flat or other non-usage charges for subscribing to a service (e.g., a termination charge which exceeds the carrier's costs of terminating a customer's use of an offering) could unreasonably impair competition or consumers' choices among offerings and carriers. We tentatively conclude that the imposition of subscription and termination charges for alternative MTS offerings do not warrant investigation when such charges reasonably and nondiscriminatorily recover the carrier's costs of initiating or terminating a service.

26. In addition, we tentatively conclude that dominant carriers may continue to choose to recover part or all of their customer initiation and termination costs through usage rather

than flat charges. Initiation and termination costs may be sufficiently low that separate charges in certain MTS offerings would cause unnecessary complexity. Bundling these costs with usage costs may promote the attractiveness of an offering to customers without making the offering unlawful. Also, customer demands for MTS initiation, usage, and termination are not separable in the same sense that demand for, say, private line bridging or switching is separable from demand for interexchange transmission. Nor do we see substantial anticompetitive effects from the carrier's choice to bundle or unbundle these rate elements. Finally, we recognize that the level of customer initiation and termination costs may vary across MTS offerings depending on the billing and collection arrangements necessary, and the marketing implications of separate flat charges may vary across MTS offerings. For example, a promotional period without flat charges may help the carrier assess the attractiveness of an offering's other rates and rate structure. We tentatively conclude that dominant carriers should have flexibility in applying reasonable, nondiscriminatory initiation or termination charges to some MTS offerings.

27. Alternative guidelines for MTS discounts and packages are discussed below. We also invite comment with respect to the lawfulness of including a minimum monthly charge as a separate rate element, such as is shown in the Block of Time tariff. In effect, the minimum monthly charge in the Block of Time tariff involves a bundled offering of up to sixty minutes of usage, with perhaps some discount compared to per-minute usage charges under the other ATCOM, Tariff F.C.C. 260 MTS offering. A minimum monthly charge may be a device by which a carrier segments its customers and limits the availability of a discount to high-volume customers. Yet, a two-part tariff (such a flat minimum monthly charge and usage charges) may promote efficient recovery of non-traffic-sensitive costs and network utilization, and allow the carrier to target its offerings reasonably to meet competition. We concluded in the *Private Line Rate Structure Order* that carriers should be able to market bundled packages of channels and services as long as general, basic building blocks were available to meet market demands.²² Applying this principle to MTS offerings, we tentatively conclude that dominant carriers should be able to offer

¹⁹ See, e.g., AT&T Block of Time Optional Calling Plan, Transmittal No. 79 (filed April 23, 1984) Section 5 at 24.

²⁰ See *MTS and WATS Market Structure*, CC Docket No. 76-72, Phase I, 93 FCC 2d 291 (1983), recon., 48 FR 42984 (September 21, 1983), further recon., 49 FR 7810 (March 3, 1984), *aff'd sub nom. National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984) *pet'n for cert. filed*, 53 U.S.L.W. 3070 (U.S. July 10, 1984) [No. 84-95]; AT&T (Docket No. 18128); AT&T (Docket No. 19129).

²² *Private Line Rate Structure Order* at para. 20.

¹⁸ See *Competitive Carrier, Fifth Report and Order*.

alternative MTS services with minimum monthly charges as long as they make available unbundled MTS services, i.e., MTS services without a minimum monthly charge, and the offering fits within the other options.

28. *Geographic Deaveraging.* The traditional MTS rate structure has a rate element for usage which varies with the air mileage between the origination and termination points, but not with any other characteristic of these points.²³ As discussed above, the relationship between this distance and the carrier's costs of supplying this call may be weak, and rates based on intermediate-point pricing or distance to carrier-designated points may lead to unreasonable, discriminatory charges. The Block of Time rate structure does not reflect any characteristic of the origination and termination points (except for delays in the availability of this service in some areas).

29. We do not intend for this proceeding to consider the possible arguments for future geographic deaveraging in MTS rates generally. Beside significantly contributing to the achievement and maintenance of universal service, geographic averaging has contribute greatly to the simplicity and clarity of MTS rates. As competitive alternatives to dominant carriers' MTS offerings grow and customers compare carriers' offerings with exchange conversions to equal access, the benefits of this simplicity to consumers and competition are substantial. In addition, geographic averaging is supported by averaged carrier common line rates and the implementation of a Universal Service Fund.²⁴ These provisions limit the range of switched access charges across geographic areas. We are uncertain that dominant carriers' cost-accounting and cost-allocation methodologies are sufficiently precise to enable these carriers reasonably to cost justify different MTS rates to points based on the points' size (in population, MTS traffic density, or other characteristic) or location with respect to certain intermediate-pricing points. Finally, we seek to avoid disruptive rate changes for customers in any geographic area. We need to gain experience with the effects of changes in our access charge rules and the Universal Service Fund before considering arguments for or possible forms of MTS geographic

deaveraging. Accordingly, we tentatively conclude that an MTS rate structure or alternative MTS rate structure that will or may result in geographic deaveraging would warrant investigation.²⁵ This would include a separate rate element for switched access costs or any other costs which would effectuate geographic deaveraging.

30. *Summary.* We believe that a dominant carrier's MTS rate elements generally should be unbundled, consistently-defined, consistently-employed, and related to market demand, pricing convenience, and cost characteristics. We also believe that consumers will benefit from simple MTS rate structures. Yet, there may be areas where some carrier flexibility to employ overlapping rate elements may be beneficial to customers. This flexibility can help dominant carriers meet competition and promote efficient use of telecommunications facilities. We do not believe that these carriers must extend the historic MTS rate structure to supplemental MTS offerings. We seek comments on the proposed alternatives or guidelines for rate elements pertaining to distance, subscription charges, and minimum monthly charges. Our discussion of rate elements is not intended to foreclose the possibility that dominant carriers will introduce other MTS rate elements and commenters may also discuss the advantages and disadvantages of MTS rate elements not described in this section. Further, we seek comments on the proposed policy relating to geographic deaveraging.

IV. MTS Discounts and Packages

31. The traditional MTS rate structure employed a forty-percent discount off daytime rates for evening usage and a sixty-percent discount off daytime rates for night and weekend usage. Supposedly, these discounts reflected the traffic patterns and the lower costs of serving off-peak usage, and helped stimulate traffic and revenues which contributed to lower rates for all MTS users. Yet, the cost and demand studies supporting these discounts were sketchy at best. Why is the discount forty-percent rather than thirty-five or forty-five percent? The light-handed approach to reviewing this portion of the MTS tariffs resulted, in part, from the limited precision of cost and demand studies. In addition, there was a general understanding that some off-peak

discounts would promote just, reasonable, and nondiscriminatory MTS rates. Finally, the Commission relied on the prescription of an authorized rate of return for AT&T and monitoring of its MTS costs, revenues, and earnings to detect and control broad abuses of MTS discounts.

32. Four other types of discount or package components appeared in ATCOM's Block of Time tariff. One type was waiver of the subscription charge for customers who subscribed during the initial promotional period. A second type was a lower charge for calling more than one hour each month compared to the minimum monthly charge for up to one hour of usage. Third, payment of a flat charge would qualify the customer for a fifteen-percent discount off the MTS evening rates. Fourth, the per-minute usage charges were lower under the Block of Time tariff than under the alternative (traditional) MTS offering for many transmissions. These individual features were not supported by cost or demand studies. Instead, the carrier's support data went to the traffic and revenues stimulated by the Block of Time package in its entirety, and to the costs of supplying the entire package. The Commission's review of this tariff did not require detailed justification of each discount or component of the package, but rather looked at whether the package would be just, reasonable, and not unreasonably discriminatory in the context of the other MTS offerings.

33. Continuation of the existing MTS time-of-day discounts, and the Block of Time tariff and the pleadings pertaining to its lawfulness, point to the need for guidelines addressing the standards we will apply in reviewing MTS discounts and packages. Our recent guidelines for private line volume discounts provide a starting point for analyzing MTS discounts and packages.²⁶ Our decision rested in part on three findings about rates that cannot be justified through a fully-distributed-costs study, but do exceed the long-run incremental or marginal cost of providing the service. First, we found that these discounts will not injure competition to the detriment of consumers. These discounts promote competition on the basis of relative efficiency, efficient resource utilization, and consumers' welfare. Next, we rejected the argument that all such discounts discriminatorily increase the cost burden on users who do not take the discounted offering. These discounts can stimulate demand for and the revenues from one of the carrier's

²³ WATS employs a variant of this approach. In the WATS rate structure, rate bands are delineated according to air mileage (length of haul) as well as the number of telephones in an area (telephone density). AT&T September 15, 1980 filing, Vol. 2-3, 4.

²⁴ See *MTS and WATS Market Structure*, 93 FCC 2d at 281-82; 47 CFR Part 69.

²⁵ In the event, however, that we adopt the proposed Joint Board recommendations, we would not apply that policy to "anti-bypass rates that may be required to implement the proposal of the Docket 80-286 Joint Board.

²⁶ Private Line Rate Structure Order at paras. 33-42.

services, and thereby can allow the carrier to reduce the costs borne by and the rates for its other services. Third, we found that growing competition increased the public benefits from allowing carriers flexibility to employ these discounts. In this context, placing a rigorous evidentiary burden on carriers to justify discounts harms consumers, impairs competition, and threatens the carriers' viability.

34. We believe that these three findings are applicable to MTS discounts and packages. We tentatively conclude that compliance with a fully-distributed-costs standard should not be the test of just, reasonable, and nondiscriminatory optional MTS offerings. Offerings which fail to recover fully-distributed costs may still satisfy concerns about anticompetitive or predatory pricing.²⁷ In fact, as we found in the *Private Line Rate Structure Order*, strict application of a fully-distributed-costs standard could inhibit the success of efficient firms, harm consumers, and waste society's resources. Also, discounts and packages that do not satisfy a fully-distributed-costs standard may lead to lower rates for all MTS customers, including those whose needs are not met by these offerings. Much of the dominant carriers' MTS revenue requirement involves joint and common costs. Higher demand for switched access services in the aggregate leads to lower switched access charges for each unit of MTS service. Rather than creating revenue shortfalls and requiring cross-subsidies, discounts and packages can stimulate demand and, with it, incremental revenues exceeding the incremental costs of providing these offerings. The new demand and revenues can lower the revenue requirement covered by other MTS offerings and, thereby, lead to decreases in their rates. In addition, nondominant carriers are expanding their networks,²⁸ increasing their offerings, and restructuring their rates. Equal access arrangements are being implemented rapidly. Flexibility for dominant carriers to implement MTS discounts and packages that are attractive to consumers is necessary for these carriers to respond to competition and to protect against higher MTS rates for all their customers.

35. Despite the possible benefits of flexibility for carriers to offer MTS discounts and packages, we remain concerned about the ability of dominant carriers to charge monopolistic, discriminatory, or anticompetitive MTS rates. For nondominant carriers, we found in the *Competitive Carrier Rulemaking* that market forces and our complaint process are sufficient to check unjust, unreasonable, or discriminatory charges or practices. For dominant carriers, we continue to rely heavily on tariff review to check unlawful rates. Given the problems with detained cost-based regulation of MTS discounts and packages, we propose to delineate the scope of general options for these offerings. These options are designed to satisfy the statutory requirements with greater reliance on market forces and less on cost analysis. One option would be based upon the following three standards for dominant carriers' MTS discounts and packages. We seek comments on these proposals as well as other recommendations for the scope of these guidelines. Clearly, the alternatives are not mutually exclusive and could be used in a variety of combinations. Commenters should indicate the benefits and detriments of using such a combination of options.

Alternative 1: Three Standards

36. The first alternative guideline or standard deals with concerns about anticompetitive pricing and revenue shortfalls and the burden of demonstration which should be borne by dominant carriers filing MTS discounts and packages. One alternative is that the filing carriers would have to show in the tariff support materials that the MTS discount or package would increase the carrier's net MTS revenues (the carrier's total MTS revenues minus the carrier's total costs of providing MTS offerings, including access costs) cumulatively over an appropriate period after the offering's effective date. The comparison of net revenues would be to an offering without the discount (e.g., evening discount versus continuation of daytime rates during those hours) or without the package (e.g., OCP tariff versus only traditional MTS offering). The support would include specification of the carrier's assumptions about its demand, costs, and revenues, and an explanation of why those assumptions are reasonable. If an offering increases net MTS revenues over a reasonable specified time, it would appear that the offering is not anticompetitive and does not create a revenue shortfall burdening other customers. This test would be applied to the discount or package in its

entirety rather than to individual rate elements. As long as the entire offering satisfies this standard, we do not believe that we should be concerned about the potential anticompetitive impact or revenue-cost relationship of any one component. This flexibility regarding package components should allow the carriers to develop offerings that stimulate demand, increase the carrier's net MTS revenues, promote the efficient use of facilities, and are not confusing to consumers. Furthermore, if the components of any one package are unattractive to any one customer group (e.g., the high minimum monthly charge for a package exceeds the customer-billing costs and makes the service unattractive to low-volume users), that group can turn to an unbundled MTS offering or another package (e.g., an offering with no minimum monthly charge).

37. In order to take account of savings to be passed on to MTS ratepayers in subsequent Carrier Common Line access tariffs, a period of 18-36 months seems appropriate. Analysis of the tariff's impact over 18-36 months reflects that a new offering may have start-up expenses (e.g., marketing costs), demand for the offering may grow over time, and changes in some costs may not occur simultaneously with the offering (e.g., lower switched access charges in response to higher aggregate switched access minutes of use and changes brought about by our access charge rules will require new tariff filings by exchange carriers).²⁹ A shorter period might unduly constrain the timing of new MTS offerings (e.g., require that offerings priced to reflect the effects of demand stimulation on costs become effective only simultaneously with new exchange access tariffs), encourage rate churn through a sequence of tariff filings as costs and demand change, and limit the carrier's ability to compete. On the other hand, waiting for an increase in net MTS revenues for an indefinite period could risk substantial revenue shortfalls that could compel other tariff filings raising some MTS rates, and could involve anticompetitive pricing.

38. In a world without any overhead cost recovery problem, price ceilings and the standard discussed above might be sufficient to prevent exploitation of market power. Indeed, price ceilings by themselves might be sufficient to achieve this result. Problems of overhead cost recovery do exist.³⁰

²⁷ See discussion of judicial and scholarly standards for predatory pricing at *id.*, Statement of Arrow in AT&T Reply Comments in CC Docket No. 83-1147.

²⁸ See comments and reply comments in CC Docket No. 83-1147 of AT&T and U.S. Department of Justice. But see joint reply comments of Allnet Communication Services, ITT Communications Services, RCA Communications, Satelitte Business Systems, and Western Union Telegraph Co.

²⁹ We also seek comment on whether monthly carrier reports should be required in order to monitor whether projected trends are being met.

³⁰ Marginal costs are generally lower than embedded or average costs in telecommunications.

however, and for this reason it is necessary to consider cost recovery in determining the consumer-welfare maximizing structure of rates. Accordingly, we are considering a guideline which would require new tariff proposals to be reasonably projected to increase the contribution to overhead cost recovery within the relevant service category.

39. The logic underlying this guideline is similar to that for the first alternative discussed, although in this case the focus is on contribution to recovery of costs not directly attributable to production of the relevant product (*i.e.*, nonmarginal costs). Tariff proposals projected to increase the contribution to overhead cost recovery within the relevant service category may not warrant investigation. One the other hand, proposals for new, lower priced offerings which cannot meet this requirement might need to be justified and might not be permitted to become effective without investigation.

40. We are prepared to consider various alternatives to this first standard. For example, instead of relying on a particular period for contribution analysis, we could combine some period with a below-the-line accounting treatment for certain losses. We could also extend the period for positive cumulative impact on MTS revenues, or supplement this test with a time for showing positive monthly cash flows. Also, we could create a zone of flexibility for MTS rates, *e.g.*, any discount lowering MTS rates by less than 10 percent or any package involving less than \$100 million in annual expenses might be treated as not posing substantial dangers of cross-subsidies and anticompetitive pricing. As an alternative, current average MTS rates might be used as a rate floor. Comments supporting such alternatives should address considerations of carrier flexibility, ease of application in tariff review, and dangers of cross-subsidies and anticompetitive pricing.

41. The next standard attempts to use market forces to help ensure that MTS discounts and packages are just, reasonable, and nondiscriminatory. It would require that no such offering could unreasonably restrict customer selections, resale, sharing, or interconnection. There should be no indirect restrictions like requiring a long notice period before a customer can discontinue a service, excessive ordering and deposit requirements, or technical impediments to resale. We would be concerned about the restraining effects of packages which include a substantial number of

discounts or rate elements available only in that package. Some unbundling of that package, *i.e.*, making some of the components available in other offerings, would widen the availability and appeal of those components to diverse customers, and thus lessen the likelihood that packages are used to discriminate in favor of certain customers.

42. The third standard deals with the geographic availability of the discount or package. A dominant carrier must make each of its MTS offerings available to all of its MTS customers. If the carrier anticipates delays in introducing an offering in some areas, its tariff support materials should show its anticipated schedule for introduction by area, describe the reasons for the delays, and explain why the offering should be introduced in some areas before it will be available nationwide. This standard will check the use of discounts and packages to achieve geographic deaveraging.

43. Standards delineating the scope of dominant carriers' options can speed tariff review of MTS discounts and packages, and increase the carriers' ability to file tariffs which are likely to be allowed to become effective. The three standards would require that these offerings increase net revenues, not unreasonably restrict customer selections, and be available to all of the carrier's MTS customers. Commenters may also want to address alternative standards. If we were to find abuses of the carrier flexibility afforded by these proposed standards resulted in unjust, unreasonable, or unreasonably discriminatory rates, we could always reimpose more detailed cost-justification requirements under the fully-distributed-costs standard.

Alternative 2: Resale

44. Price discrimination among customers can be tried by any seller whose customers' demands are identifiably different and whose customers cannot resell to each other. If the only reason that resale is infeasible is that it is disallowed by regulation or other legal restrictions, then removal of the prohibition may suffice to ensure against unreasonably discriminatory rates.

45. If two customers in a market face different prices for the same good or service, there is an efficiency distortion among customers. Both could be made better off by allowing resale. But if they could in fact resell, no one would pay the higher price, so the seller could no longer sell at different prices.

46. We specifically seek comment on whether our existing resale

requirements, and the requirement that AT&T continue offering existing services along with new services, are sufficient to prevent unreasonable or unjust discrimination among customers. Specific examples of alleged inadequacy will be more helpful to our evaluation than generalized references to AT&T's market power. Similarly, examples in which resale is currently limiting exercise of market power by AT&T will be more useful to us than mere assertions that the market is competitive.

Alternative 3: Multipart Pricing

47. One possible way to overcome monopoly distortions associated with price discrimination and still ensure adequate cost recovery is multipart pricing. Multipart pricing resembles, but must be distinguished from, price discrimination. Multipart pricing is pricing with more than one element, for example a flat plus a variable rate element. While the purpose of price discrimination is to maximize the excess of revenues over costs, multipart pricing is designed to maximize output and consumer welfare in a manner that is consistent with avoiding a deficit.

48. Regulatory statutes that forbid rate discrimination tend to equate discrimination with difference in rates and nondiscrimination with rate uniformity. Thus, multipart pricing has been suspect and average-cost pricing, although economically inefficient (detrimental to consumers), encouraged. We believe our tariffing guidelines should draw a distinction between desirable multipart pricing and undesirable price discrimination. We seek comment on the usefulness of such a distinction and on the benefits and costs of such an approach.

49. To illustrate the kind of guideline that could be used to distinguish between reasonably and unreasonably discriminatory multipart tariffs, consider a simple guideline for evaluating simple two-part tariffs consisting of fixed and variable charges for usage. This guideline would make the standard of reasonableness whether all customers are charged the same price (variable charge) for the last unit of consumption. If they are not charged the same marginal price, the ways in which the lower-last price buyers would use the product are less valuable than the ways in which the higher-last price buyers do. This creates waste and a loss of consumer welfare. For more complex multipart pricing schemes, general criteria of reasonableness should focus on whether the proposed tariffs result in lower service charges priced closer to

marginal costs of production and whether they expand economic welfare.

Alternative 4: Meeting Competition.

50. We recognize that an overly rigid adherence to any set of tariff guidelines could disadvantage ATCOM as it faces increasing competition from new entrants into its traditional markets. Therefore, we seek comment generally on how ATCOM should be allowed to respond to competitive threats, and how, if at all, our guidelines should be adjusted in such circumstances.³¹

51. Specifically, we seek comment on two variants of the ceiling approach. The first requires that proposed tariff offerings be subject to duration requirements. For example, if a new ATCOM proposal cut the price of a service, ATCOM might be required to keep the new tariff in effect for a specific length of time (e.g., 6 months, 3 years, 5 years). Under the ceiling approach, the dominant carrier would need to receive specific regulatory approval to raise prices. Thus, under this variant, ATCOM would have to commit itself at the outset to maintaining the rate cuts for a substantial period of time. The economic logic of this approach is the same as that underlying imposition of price ceilings: it removes the prospect of supernormal profits in the future and thus the incentive to cut prices to unremunerative levels in the short run.³²

52. Another tactic for limiting predation focuses on the effects of predation rules on pre-entry economic welfare. Under any rule which allows some freedom to respond to competition, prices will be maintained at higher levels before entry occurs (assuming no or ineffective regulation) than they would be if no post-entry response were permitted. If a firm knows it can respond after entry occurs, it will have less incentive to maintain prices at low, entry-detering levels than it would if it

knew it would not be permitted to respond in the post-entry period. This proposal assumes that the dominant firm possesses exceptional foresight, and is, therefore, in a position to anticipate all the forms competition might take and price accordingly. We seek comment on how realistic this assumption is. Nonetheless, while most economists would argue that competitive responses are part of the competitive process, and a way of spreading its benefits, we seek comment on whether this approach may be useful in some circumstances. However, we recognize that inability to withdraw a price cut will necessarily have the effect of making the incumbent firm reluctant to experiment with new, innovative pricing arrangements.

Alternative 5: Fully Distributed Cost (FDC)

53. An additional alternative is to continue our present approach, relying on a more elaborate version of the Interim Cost Allocation Manual (ICAM), to accommodate our tariff review practice to the changing competitive environment.³³ We might also apply standards for acceptable tariffs similar to those enunciated recently in our *Private Line Rate Structure Order*. We are concerned, however, that this approach may not be sufficiently flexible to accommodate an increasingly competitive environment. As we noted in the *Private Line Rate Structure Order*, FDC tariffs for each service offering might undermine competition and the efficient provision of services to customers. We seek comment and evidence on the following questions:

(1) To what extent is FDC compatible with an economic approach to telecommunications regulation?

(2) What are the efficiency effects of reliance on FDC?

(3) What, if any, are the equity considerations that can only be met through FDC?

(4) If a FDC methodology is used, should it be based on current procedures as laid out in the ICAM? If some alternative would be better, is it based on gross revenues, directly attributable costs, relative output or some other measures? Commenters should explain how their suggested criteria would operate in an increasingly competitive environment.

(5) As competition develops to different degrees for different services,

what incentives will ATCOM have to reallocate common costs? How should the Commission respond to ATCOM's attempts to respond to those incentives?

(6) What are the implications of an FDC methodology for entry policies in competitive markets for unregulated substitutes?

(7) What dynamic considerations (productivity improvement and cost reduction) should govern exceptions to strict application of the FDC guidelines?

V. Conclusion and Ordering Clauses

54. Pursuant to our authority under Sections 4(i) and (j), 201-205, and 403 of the Communications Act, as amended, 47 U.S.C. 154(i)(j), 201-205, and 403, it is ordered that comments on the proposed guidelines shall be due on February 1, 1985, with reply comments due on March 1, 1985.

55. For purposes of this non-restricted notice and comment proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally Section 1.1231 of the Commission's Rules, 47 CFR 1.1231. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not

³¹ We also encourage comments on how standards advanced by antitrust scholars to judge whether a firm's pricing policies are predatory might be adapted to our particular needs. Areeda and Turner, Baumol, Bork and Posner are examples of scholars who have such standards; examples of standards advanced include long run (marginal) cost, short run marginal cost and average variable cost. We recognize there is a range of positions on this issue. See, e.g., John S. McKee, *Predatory Pricing Revisited*, *Journal of Law and Economics*, Vol. XXIII (2) (October 1980); Douglas F. Greer, *A Critique of Areeda and Turner's Standard for Predatory Practices*, *Antitrust Bulletin* (Summer 1979). For an overall discussion and specific references, see Paul L. Joskow and Alvin Klevorick, *A Framework for Analyzing Predatory Pricing Policy*, 89 *Yale L.J.* 261 (December 1979).

³² Comments are invited on the possible relevance of *American Telephone and Telegraph Company v. FCC*, 487 F.2d 864 (2d Cir. 1973) to such an approach.

³³ We repeat that this docket is not directed at evaluating the traditional "non-optional" MTS offering. Hence, adopting this approach would not require an examination of existing off-peak discount practices.

contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

56. In accordance with the provisions of 47 CFR 1.419(b), an original and six copies of all comments, replies, pleadings, briefs and other document filed in this proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters in Washington, D.C. 1919 M Street, NW.

57. Pursuant to the Regulatory Flexibility Act of 1980, it is certified that the guidelines proposed in this proceeding are exempt from application of the statute because they will not have a significant economic impact on a substantial number of small entities. Although some local exchange carriers are small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity," which incorporates the definition of a "small business" in Section 3 of the Small Business Act. The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. This Commission has found all exchange carriers to be dominant in the *Competitive Carrier Rulemaking*, 85 FCC 2d 1, 23-24 (1980). This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605.

Federal Communications Commission,
William J. Tricarico,
Secretary.

Statement of Chairman Mark S. Fowler

In this Notice of Proposed Rulemaking, the Commission addresses important issues of pricing policy that must be resolved to ensure a successful transition from regulated monopoly to competitive market organization in telecommunications. During this transition period, entry into the industry has been freed, a competitive resale policy has been implemented to limit

unwarranted price discrimination, and we have made progress toward resolution of our serious fixed cost recovery problem through imposition of a customer line charge. AT&T remains subject to extensive regulatory oversight by the Commission and, I would stress, will continue to remain subject to this scrutiny as a result of any action contemplated in, or that might be taken in direct consequence of, this proceeding.

Here we seek comment to help us formulate guidelines governing AT&T's optional MTS rates and rate structure plans. While continued regulatory scrutiny of AT&T's pricing decisions is fully warranted and consistent with a measured transition to a more competitive environment, the public interest requires that AT&T be given some freedom to compete. The public benefits especially if that freedom can be manifested in innovative pricing proposals that not only lower prices for consumers but also help us meet our fixed cost recovery constraint.

Indeed, it is incumbent on us to take steps to encourage that kind of competition by AT&T, in part so we can determine whether more reliance on a competitive, self-policing model is warranted, and in part to discourage passive, noncompetitive behavior on AT&T's part. If we do not permit AT&T to respond to competition, we might well end up with rates that are too high today and with excess capacity and low rates of capacity utilization during the 1990's. Moreover, a "competitive" industry structure that is merely an artifact of umbrella pricing and dominant firm passivity supplies scant basis for prudent deregulation.

The Commission is operating in a difficult situation because we have a serious fixed cost recovery constraint. In this kind of environment, multipart pricing may have a role to play. We seek to develop a workable set of guidelines on this innovative pricing approach. Another proposal that is set forth for comment in the Notice of Proposed Rulemaking would make increased contribution to fixed cost recovery within a given service category a criterion of acceptability for price discount proposals. If such gains can be reasonably expected to flow from a pricing proposal, this implies that all consumers, not just those who take advantage of the price cuts, are made better off as a result of the offering. If the logic that underlines this result can withstand critical scrutiny and, again, if we can develop workable guidelines, we will have accomplished something very worthwhile.

I am heartened that this decision moves the telecommunications industry one step closer to a level playing field, where market forces supplant pervasive governmental intervention. At the same time, it steers a moderate course, guaranteeing that an increase in latitude for the dominant carrier's pricing does not harm growing competition. I look forward to studying the comments on the proposals set forth here.

[FR Doc. 85-948 Filed 1-11-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 63 and 76

[Docket Nos. 18891, 19659, 20767, 21002; RM Nos. 2695, 2723, 3999, 4164, and 4241]

Certain Aspects of Cable Television Systems; Correction

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order dismissing Petitions and Terminating Proceedings; Correction.

SUMMARY: On December 17, 1984, the Commission published a Memorandum Opinion and Order in the *Federal Register* [49 FR 48949] concerning Cable Television and Part 63 of the Commission's Rules. Inadvertently, the assigned FCC number was referred to as FCC 84-606. The correct FCC number is 84-612.

FOR FURTHER INFORMATION CONTACT: Judith Herman, (202) 632-6302.
William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85-949 Filed 1-11-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 31220-244]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed allocation of reserve.

SUMMARY: NOAA proposes to allocate 13,941 metric tons (mt) of Atlantic mackerel to the total allowable level of foreign fishing (TALFF). This action is allowed by regulations implementing the Fishery Management Plan for the

Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The intended effect of the allocation is to promote full utilization of the optimum yield by all harvesters of this fishery.

DATE: January 14, 1985. Comments must be submitted in writing on or before.

ADDRESS: Comments should be sent to Salvatore A. Testaverde, NMFS, State Fish Pier, Gloucester, MA 01930-3097. Mark "Comments on Atlantic Mackerel Reserve" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600, extension 273.

SUPPLEMENTARY INFORMATION: Section 655.23(a)(1) established a mechanism to allocate all or part of the mackerel reserve to TALFF (48 FR 44834, September 30, 1983). For the 1984-1985 (April 1, 1984 through March 31, 1985) fishing year, a reserve of 28,500 mt of Atlantic mackerel was established (49 FR 13373, April 4, 1984). The regulations require the Director, Northeast Region, NMFS (Regional Director), to project the total domestic mackerel harvest for the entire fishing year, based on U.S. landings from April through September and the results of a survey of the intent of domestic fishermen to harvest mackerel during the remainder of the year. Upon this projection, the Regional Director determines the disposition of the reserve allocation.

The reported domestic commercial landings of Atlantic mackerel from April 1, 1984, through September 30, 1984,

were 1,484 mt, and this figure was used to project the total catch for the entire fishing year. The Regional Director estimates that U.S. landings, including an estimated recreational catch of 4,000 mt (similar to the 1983-1984 fishing year), would total 7,000 to 8,000 mt. The November/December 1984 survey of Atlantic mackerel processors indicated that they intend to take approximately 5,000 mt for the fishing year.

Additionally, NOAA has approved two mackerel joint ventures (JVs) for the current fishing year. Both JVs are renewals, first approved at the beginning of this fishing year. Both JVs have requested mackerel amounts for directed foreign fishing beginning early in 1985, the last three months of the 1984-1985 fishing year, which will total 38,200 mt. Since the 1984-1985 TALFF is 28,500 mt, the directed fishing amount requested will require transferring part of the reserve to TALFF. The TALFF already harvested by foreign nations and the additional TALFF needed by foreign nations for directed fishing and bycatch for the remainder of the fishing year will require a transfer of 13,941 mt of Atlantic mackerel from reserve. The new TALFF of 42,441 mt is expected to accommodate directed fishing by all foreign nations within the fishery conservation zone.

Bycatch specifications will be adjusted accordingly as specified for squid at § 655.21(b)(1)(iv)(A) and (B), and (v), and for butterfish at § 655.21(b)(3)(iii). The following species'

bycatch TALFF specifications will increase: *Loligo*, 1 percent; *Illex*, 1 percent; and butterfish, 1 percent.

The domestic annual harvest of 26,500 mt is expected to accommodate the domestic fishing industry. The remaining 14,559 mt in reserve will be held pending another potential JV for Atlantic mackerel that will purchase over the side from U.S. fishermen but is not expected to request any mackerel for a directed foreign fishery.

Comments on this proposed allocation of reserve will be considered by the Regional Director in the final allocations decision.

Classification

This action is required by 50 CFR Part 655, and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements

(16 U.S.C. 1801 *et. seq.*)

Dated: January 7, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-877 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 50, No. 9

Monday, January 14, 1985

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

Commodity Credit Corporation

1985 Feed Grain Program; Determinations Regarding the Proclamation of 1985-Crop Program Provisions for Corn, Sorghum, Barley, Oats, and Rye

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determinations of the 1985-crop feed grain loan and purchase rates, established (target) prices, acreage reduction program, and other program provisions.

SUMMARY: The purpose of this notice is to affirm the following determinations made by the Secretary of Agriculture on September 14, 1984 with respect to the 1985 crops of corn, sorghum, barley, oats, and rye: (1) The loan and purchase levels per bushel shall be \$2.55 for corn, \$2.42 (4.32 per cwt.) for sorghum, \$2.08 for barley, \$1.31 for oats, and \$2.17 for rye; (2) the established (target) price levels per bushel are \$3.03 for corn, \$2.88 for sorghum (\$5.14 per cwt.), \$2.60 for barley, and \$1.60 for oats; (3) an acreage reduction program will be in effect for feed grains with a uniform reduction of 10 percent for corn, sorghum, barley, and oats; (4) the feed grain base acreages for 1985 will be the average acreage planted and considered planted to feed grains in 1983 and 1984; (5) grazing of acreage conservation reserve acreage will not be permitted during the five principal growing months; (6) there will be advance deficiency payments; (7) a determination as to whether entry will be permitted into the farmer-owned reserve will be made at a later date; (8) offsetting compliance will not be required; (9) binding contracts must be executed by producers in order to participate in the 1985 Feed Grain Program; (10) barley producers shall be eligible for payments; (11) malting

barley shall not be exempt from the feed grain acreage reduction program; (12) corn silage will not be available for price support loans; and (13) popcorn acreage is not included in the program. These determinations are made in accordance with Sections 105B, 107C, and 110 of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act").

EFFECTIVE DATE: September 14, 1984.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-4417. The Final Regulatory Impact Analysis describing the options considered in developing this notice of determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The title and number of the federal assistance programs to which this notice applies are: Title—Feed Grain Production Stabilization: Number 10.055 and Title—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

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

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

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental

consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This notice sets forth determinations with respect to the following issues which are described briefly:

1. **Loan and Purchase Level.** Section 105B(a)(1) of the 1949 Act provides that the Secretary shall make available to producers loans and purchases for the 1985 crop of corn at such a level, not less than \$2.55 per bushel, as the Secretary determines will encourage the exportation of feed grains and not result in excessive total stocks of feed grains after taking into consideration the cost of producing corn, supply and demand conditions, and world prices for corn. Section 105B(a)(2) provides that the Secretary shall make available to producers loans and purchases for the 1985 crops of grain sorghum, barley, oats, and rye at such levels as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and other factors specified in Section 401(b) of the 1949 Act.

2. **Established (Target) Price.** Section 105B(b)(1)(C) of the 1949 Act provides that the established (target) price for 1985-crop corn shall not be less than \$3.03 per bushel. The Secretary may adjust this established (target) price to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. Section 105B(b)(1)(E) of the 1949 Act provides that the payment rate for grain sorghum, oats, and, if designated by the Secretary, barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available for corn.

3. **Acreage Reduction Program (ARP) and Cash Land Diversion Program (CLD).** Sections 105B(e)(1) and (2) of the 1949 Act provide that the Secretary may establish an ARP for the 1985 crop of feed grains if the Secretary determines that the total supply of feed grains, in

the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Section 105B(e)(1)(C) of the 1949 Act provides that if the Secretary estimates that the quantity of corn on hand in the United States on September 30, 1985 (not including any quantity of corn produced in the United States during calendar year 1985) will exceed 1.1 billion bushels, the Secretary shall provide for a CLD program under which the acreage planted to feed grains for harvest on the farm would be limited to the acreage base for the farm reduced by a total of at least 5 percent and may provide for an ARP. If the Secretary implements a combined CLD program and an ARP, the total reduction required by the Secretary shall not exceed 20 percent. Any reduction required in excess of 15 percent shall be equally apportioned between a CLD program and an ARP. The Secretary shall announce whether an ARP is to be in effect for the 1985 crops of corn, sorghum, oats and, if designated, barley by not later than September 30, 1984. However, the Secretary may make appropriate adjustments in the announced ARP not later than October 30, 1984, if the Secretary determines that there has been a significant change in the total supply of feed grains since the earlier announcement. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each feed grain-producing farm. Producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for feed grain loans, purchases, and payments with respect to that farm. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of feed grains times the number of acres actually planted to feed grains by (2) the number of acres authorized to be planted to feed grains under a limitation established by the Secretary, shall be devoted to conservation uses in accordance with regulations issued by the Secretary.

If a CLD program is implemented, such payments are to be made in an amount computed by multiplying (1) the diversion payment rate, by (2) the farm program payment yield for the crop, by (3) the additional acreage diverted under the CLD program. The CLD payment rate for the 1985 crop of corn is to be established by the Secretary at not less than \$1.50 per bushel. CLD payment

rates for sorghum, barley and oats will be set at such level as the Secretary determines is fair and reasonable in relation to the CLD payment rate for corn. The Secretary is required to make not less than 50 percent of the CLD program payments to producers of the 1985 crop of feed grains as soon as practicable after a producer enters into a CLD contract and in advance of any determination of performance.

4. Establishment of Acreage Bases. Section 105B(e)(2) of the 1949 Act provides that the acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage planted on the farm to feed grains for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to feed grains for harvest in the two crop years immediately preceding the year for which the determination is made. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base.

5. Haying and Grazing of Land Devoted to Acreage Conservation Reserve (ACR). Section 105B(e)(4) of the 1949 Act provides the Secretary may permit all or any part of land designated as acreage conservation reserve to be devoted to sweet sorghum, hay and grazing or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodities, if the Secretary determines that such crop production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of price support programs, and will not affect farm income adversely. The regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

6. Advance Deficiency Payments. Section 107C of the 1949 Act provides that, if the Secretary establishes an acreage reduction or acreage set-aside program for feed grains and determines that deficiency payments will likely be made for such crop, the Secretary may make available advance deficiency payments to producers who agree to participate in such program.

7. Farmer-Owned Reserve Program. Section 110 of the 1949 Act provides that the Secretary shall formulate and

administer a program under which producers of feed grains will be able to store such feed grains when feed grains are in abundant supply and extend the time period for their orderly marketing. Under such program, the Secretary shall provide original or extended price support loans at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the current level of support provided under the feed grain program established in accordance with Section 105B of the 1949 Act. The program may provide for (1) repayment of such loans in not less than 3 years nor more than 5 years; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate of interest charged CCC by the United States Treasury, except that the Secretary may waive or adjust such interest as the Secretary deems appropriate; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers before the market price for feed grains has reached the trigger release level; and (5) conditions designed to induce producers to redeem and market the feed grains securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for feed grains has attained a specified trigger release level, as determined by the Secretary. The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcements, the Secretary shall specify the quantity of feed grains to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of feed grains. The Secretary may place an upper limit on the amount of feed grains placed in the reserve but such upper limit may not be less than 1 billion bushels of feed grains.

8. Offsetting Compliance. Section 105B(g) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the feed grain program. The Secretary may promulgate regulations providing for offsetting compliance requirements. If such regulations are implemented, operators and owners of farms must ensure that all of the farms in which they have an interest are in compliance with the program requirements which are specified with respect to the feed grain

program, such as planting within the established feed grain acreage base or the normal crop acreage established for such farms, in order to be eligible for program benefits.

9. *Binding Contracts.* The Secretary may require that program contracts between producers and CCC be binding. These contracts may also provide for liquidated damages in the event producers do not fulfill the terms and conditions of the contracts.

10. *Barley as an Eligible Commodity for Payment Purposes Under the Feed Grain Program.* Section 105B(b)(1)(E) of the 1949 Act gives the Secretary discretionary authority to include or exclude barley as a commodity eligible for payments under the feed grain program. In the past, barley has been included as an eligible commodity with the exception of the 1967, 1968 and 1971 programs. If barley were not included in the 1985 program, barley producers would not be eligible to receive payments under the feed grain program for their crops but would be eligible for the price support loan and purchase program and farmer-owned grain reserve program.

11. *Exemption of Malting Barley.* In accordance with Section 105B(e)(2) of the 1949 Act, the Secretary may provide that no producer of malting barley shall be required as a condition of eligibility for feed grain loans, purchases, and payments to comply with any acreage limitation if such producer has previously produced a malting variety of barley, plants barley only of an acceptable malting variety for harvest, and meets other conditions as the Secretary may prescribe.

12. *Non-Recourse Loans and Purchases for Corn Silage Grain Equivalent.* The Agricultural Programs Adjustment Act of 1984 amended Section 105B(a) of the 1949 Act to provide that the Secretary may make available loans and purchases to participating producers who cut the 1985 corn crop for silage. Such loans and purchases may be made on a quantity of corn of the same crop, other than the corn cut for silage, acquired by the producer equivalent to a quantity determined by multiplying the acreage cut for silage by the lower of the farm program yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which silage was obtained.

13. *Exclusion of Popcorn.* Section 301(a)(9) of the Agricultural Adjustment Act of 1938 defines the term "corn" to mean "field corn." The Secretary has previously defined "corn" for the purpose of the feed program to mean: "field corn or sterile high-sugar corn.

Popcorn, sweet corn, and corn varieties grown for decoration are excluded." If "popcorn" were considered as "corn" for the purpose of the 1985 Feed Grain Program, producers growing popcorn would be subject to any applicable production adjustment requirements and would be eligible for program benefits, including price support loans and purchases and deficiency payments.

Summary of Public Comments

A notice of proposed determination with respect to the 1985 Feed Grain Program was published in the *Federal Register* on June 6, 1984 (49 FR 23416) and provided for a 60-day comment period. A total of 104 comments were received. The majority of comments addressed the following fourteen issues: (1) Loan and purchase level; (2) established (target) price; (3) acreage educating program; (4) cash land diversion program; (5) payment-in-kind program; (6) establishment of feed grain base acreages; (7) announcement date of the program; (8) haying and grazing requirements for acreage conservation reserve acreage; (9) offsetting compliance; (10) inclusion of barley in the feed grain program; (11) exclusion of malting barley from an acreage reduction program; (12) inclusion of popcorn in the feed grain program; (13) the farmer-owned reserve program; and (14) binding program contracts. The following is a summary of the comments received.

1. *Loan and Purchase Level:* With respect to the loan and purchase level, 24 comments were received. Fourteen favored a higher loan and purchase level than in 1984, three favored a lower level, and two favored a level established at the maximum level under consideration by the Department. Two favored setting the loan level as a percentage of the 5-year season average price, one favored a level of 50 percent of parity for corn, and two favored a level of 65 percent of parity for corn.

2. *Established (Target) Price:* With respect to the established (target) price, 30 comments were received. Fifteen favored a higher target price than in 1984 and eight supported the same target price. Four favored a target price set at 100 percent of parity and three favored eliminating the target price.

3. *Acreage Reduction Program (ARP):* Fifty-seven comments were received. Fifty-two favored and five opposed an ARP. Twelve favored a voluntary 10 percent ARP.

4. *Cash Land Diversion (CLD) Program:* Thirty-three comments were received. Twenty-six favored and seven opposed a CLD program.

5. *Payment-In-Kind (PIK) Program:* Twenty-seven comments were received. Eighteen favored and nine opposed implementation of a PIK program.

6. *Establishment of Feed Grain Base Acreages:* With respect to the establishment of feed grain base acreages, fourteen comments were received. Nine comments favored the use of an average of the previous 2 years' planted feed grain acreage in order to determine farm acreage based and five favored the use of a 4-year history of planted feed grain acreage in order to determine the farm acreage bases.

7. *Announcement of the 1985 Feed Grain Program:* Five comments were received, all favoring an early announcement of the 1985 Feed Grain Program.

8. *Haying and Grazing of Acreage Conservation Reserve (ACR):* Forty-seven comments were received. Twenty comments favored and twenty-seven comments opposed haying and grazing of ACR acreage.

9. *Offsetting Compliance:* Twenty-nine comments were received. Two favored and twenty-seven opposed the implementation of offsetting compliance requirements.

10. *Inclusion of Barley in the 1985 Feed Grain Program:* Twenty-two comments were received. Fourteen favored and eight opposed the inclusion of barley in the 1985 Feed Grain Program.

11. *Exclusion of Malting Barley from an Acreage Reduction Program:* Seven comments were received. One favored and six opposed the exclusion of malting barley from the 1985 Feed Grain Program.

12. *Inclusion of Popcorn in the 1985 Feed Grain Program:* Two comments were received. Both favored the inclusion of the average of the 1980-1983 popcorn acreages in a farm's corn/sorghum base. Both however, opposed popcorn being considered as an eligible commodity for benefits under the feed grain program.

13. *Farmer-Owned Reserve Program:* Twenty-three comments were received. Fifteen favored and eight opposed a farmer-owned reserve. Seven favored immediate entry into the reserve and two favored a delayed entry.

14. *Binding Program Contracts:* Thirty-three comments were received, all favoring binding program contracts.

Determinations

Section 105B(e)(1) of the 1949 Act requires that a number of the determinations with respect to the feed grain program be made not later than

September 30 prior to the calendar year in which the crop is harvested. On September 14, 1984, the Secretary announced by press release the various program determinations for the 1985 crop of feed grains. Since the only purpose of this notice is to affirm the program determinations announced, it has been determined that no further public rulemaking is required with respect to the following determinations:

1. *Loan and Purchase Level:* In accordance with Sections 105B(a)(1) and (2) of the 1949 Act, it has been determined that the loan and purchase level per bushel shall be \$2.55 for corn, \$2.42 (\$4.32 per cwt.) for grain sorghum, \$2.08 for barley, \$1.31 for oats, and \$2.17 for rye. It was determined that these levels will best encourage the exportation of feed grains and not result in excessive total stocks of feed grains after taking into consideration the cost of producing feed grains, supply and demand conditions, and world prices for feed grains.

2. *Established (Target) Price:* In accordance with Section 105B(b)(1)(C) and (E) of the 1949 Act, it has been determined that the established (target) prices per bushel shall be \$3.03 for corn, \$2.88 (\$5.14 per cwt.) for grain sorghum, \$2.60 for barley, and \$1.60 for oats, which are the minimum statutory levels. It was determined that any increase in the established (target) prices above the minimum statutory levels will further increase production by U.S. and foreign feed grain producers and result in an undesired increase in feed grain production. Sufficient producer participation is projected with the announced levels. In addition, higher established (target) prices would result in substantially higher Treasury costs without an improvement in the level of feed grain supplies.

3. *Acreage Reduction/Cash Land Diversion Program:* In accordance with Sections 105B(e)(1) and (2) of the 1949 Act, it has been determined that a 10 percent ARP shall be implemented. It has been determined that no CLD or optional diversion program with PIK compensation will be offered to producers for the 1985 crop of feed grains. A more aggressive acreage reduction program would signal to the rest of the world that the U.S. was willing to continue to assume the world supply adjustment burden while allowing our competitors in world markets to expand their production and reap the benefits of any resultant price strength.

Producers will be required to reduce their 1985 acreage of feed grain for harvest from the established acreage base by at least 10 percent in order to be

eligible for loans, purchases, and payments. It has been determined that the total supply of feed grains, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. This option was selected because it provides the best balance between the multiple objectives of providing adequate feed grain supplies for domestic and foreign utilization, while maintaining adequate carryover stocks, supporting farm income, combating inflation, holding down Treasury costs and conserving natural resources.

Acreage designated for conservation use must be cropland that was devoted to row crops, small grains or other annual crops in 2 of the last 3 years. With respect to farms with a summer fallow rotation, acreage designated as ACR must be cropland that was devoted to row crops, small grains or other annual crops in 1 of the last 2 years. It has been determined that this action was necessary to achieve a high level of participation in the 1985 Feed Grain Program in the summer fallow regions.

4. *Establishment of 1985-Crop Acreage Bases:* In accordance with Section 105B(e)(2) of the 1949 Act, it has been determined that the 1985 feed grain acreage bases shall be established using the average of the acreage which was planted and considered planted to feed grains for the 1983 and 1984 crops. For farms where crop rotation practices are utilized, the acreage base shall be the acreage which was planted and considered planted to feed grains in the immediately prior years that correspond to the farm's rotation practice. This method was selected to moderate the impacts of overplantings on farms not participating in the commodity production adjustment programs in prior years.

5. *Grazing and Haying of Acreage Conservation (ACR) Acreage:* In accordance with Section 105B(e)(4) of the 1949 Act, it has been determined that feed grain producers shall not be permitted to harvest cover on ACR acreage for hay or to plant alternate crops on ACR acreage. Grazing of ACR acreage will be authorized except during the five principal growing months as determined by County Agricultural Stabilization and Conservation (ASC) committees. In the event of a natural disaster, emergency grazing and haying may be approved as necessary on a county-by-county basis.

6. *Advance Deficiency Payments:* In accordance with Section 107C of the 1949 Act, it has been determined that

there will be advance deficiency payments for the 1985 crop of feed grains. Producers may request 50 percent of their projected deficiency payment when they enroll in the 1985 Feed Grain Program.

7. *Farmer-Owned Reserve Program:* In accordance with Section 110 of the 1949 Act, the Secretary has determined that there will be no direct entry into the farmer-owned reserve program for the 1985 crop of feed grains. Further, the Secretary intends to review the size of the reserve before regular price support loans for the 1985 crop reach maturity. A determination whether to impose a limitation on the size of the reserve will be made accordingly.

8. *Offsetting Compliance:* In accordance with Section 105B(g) of the 1949 Act, it has been determined that offsetting compliance will not be required as a condition of eligibility for program benefits on a farm where a producer has an interest in more than one farm.

9. *Binding Program Contracts:* Contracts signed by program participants will be considered binding at the end of the signup period and will provide for liquidation damages if producers do not comply with contractual arrangements. It has been determined that binding contracts will ensure a high level of compliance by those producers enrolling in the program and will also result in a more effective program.

10. *Inclusion of Barley:* In accordance with Section 105B(b)(1)(E) of the 1949 Act, it has been determined that barley is eligible for program payments. Including barley in the feed grain acreage reduction program permits the Secretary to implement a program to align barley stocks with barley demand.

11. *Exemption of Malting Barley:* In accordance with Section 105B(e)(2) of the 1949 Act, it has been determined that malting barley shall not be exempt from the feed grain acreage reduction program. Because a large proportion of barley production is planted to malting barley varieties, exempting malting barley varieties from any production adjustment requirements would greatly reduce the effectiveness of the barley program.

12. *Non-Recourse Loans and Purchases for Corn Silage Grain Equivalent:* In accordance with Section 105B(a)(3), it was determined that corn silage grain equivalent will not be eligible for non-recourse loans and purchases. It was determined that, given current price projections, the net incentive for a livestock producer to utilize this program would be small.

13. *Exclusion of Popcorn.* It has been determined that popcorn will not be considered as field corn for the purposes of the 1985 Feed Grain Program. Exclusion of popcorn from the program means that popcorn is not eligible for program benefits and acreage which is planted to popcorn is not restricted by the acreage reduction provisions of the 1985 Feed Grain Program. Although a minimal amount of popcorn production is utilized as feed for livestock, the principal demand for popcorn has always been in the consumer market. Thus, the impact of popcorn upon feed grain supplies is very marginal.

In addition, popcorn acreages were not reported by producers to the U.S. Department of Agriculture in 1983 or 1984. Accordingly, it would not be possible for the Department to equitably establish farm acreages bases for corn to include popcorn for these years. Further, with respect to price support loans and purchases, grade standards and appropriate premiums and discounts for variations in the grade of popcorn would need to be established. Also, if CCC acquired stocks of popcorn under the price support loan and purchase program, CCC would be required to store the commodity and attempt to dispose of it without disrupting the popcorn market. This would adversely affect established popcorn markets since most popcorn is grown under contracts with popcorn processors.

Authority: Secs. 105B, 107C, 110, 95 Stat. 1227, as amended, 96 Stat. 766, 91 Stat. 951, as amended (7 U.S.C. 1444d, 1445b-2, and 1445e); 1001, 91 Stat. 950, as amended (7 U.S.C. 1390).

Signed at Washington, D.C. on January 8, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-977 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-05-M

1985 Rice Program; Determination Regarding the Proclamation of 1985-Crop Program Provisions for Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1985-crop program provisions for rice.

SUMMARY: The purpose of this notice is to affirm the following determinations which were made by the Secretary of Agriculture on September 14, 1984, with respect to the 1985 crop of rice: (1) The loan and purchase level shall be \$8.00 per hundredweight; (2) the established (target) price level shall be \$11.90 per

hundredweight; (3) an acreage reduction program for rice will be in effect with a uniform reduction of 20 percent combined with a land diversion program of 15 percent; (4) the rice acreage base for each farm in 1985 will be the average acreage planted and considered planted to rice on the farm in 1983 and 1984; (5) with respect to land designated as acreage conservation reserve, rice producers shall not be permitted to harvest cover for hay nor graze such land during the five principal growing months; (6) cross compliance and offsetting compliance shall not be required; and (7) binding contracts must be executed by producers in order to participate in the 1985 Rice Program. These determinations are required to be made in accordance with provisions of Section 101(i) of the Agricultural Act of 1949, as amended, (hereinafter referred to as the "1949 Act").

EFFECTIVE DATE: September 14, 1984.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: George H. Schaefer, Supervisory Agricultural Marketing Specialist, Commodity Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, or call (202) 447-4634. A Final Regulatory Impact Analysis describing the options considered in developing this Notice of Determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The titles and numbers of the federal assistance programs to which this notice applies are: TITLE—Rice Production Stabilization, Number 10.065; and TITLE Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

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

It has been determined by an environmental evaluation that this action will have no significant impact on

the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

This notice sets forth determinations with respect to the following issues:

1. *Loan and Purchase Level.* Section 101(i)(1) of the 1949 Act provides that the Secretary of Agriculture shall make available to producers in the several States of the United States loans and purchases for the 1985 crop of rice at such level as bears the same ratio to the loan level for the 1984 crop as the established price for the 1985 crop of rice bears to the established price for the 1984 crop. The loan and purchase rate for the 1985 crop of rice is to be established on the basis of the 1984 loan and purchase rate prior to any adjustments, if the Secretary determines that loans and purchases at the foregoing level would substantially discourage the exportation of rice and result in excessive stocks of rice in the United States, the Secretary may establish loans and purchases at such level, not less than \$8.00 per hundredweight, as the Secretary determines necessary to avoid such consequences.

Section 403 of the 1949 Act provides that appropriate adjustments may be made in the support price for rice for differences in grade, type, quality, location, and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average support price will, on the basis of the anticipated incidence of such factors, be equal to the level of support.

2. *Established (Target) Price.* Section 101(i)(2)(C) of the 1949 Act provides that the established price for rice shall be not less than \$11.90 per hundredweight for the 1985 crop. Such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (a) the average adjusted cost of production per acre for the 1983 and 1984 crop years from (b) the average adjusted cost of production per acre for the 1982 and 1983 crop years.

3. *National Program Acreage (NPA).* Section 101(i)(4)(A) of the 1949 Act provides that the Secretary shall proclaim an NPA for the 1985 crop of rice not later than January 31, 1985. The NPA for rice is to be the number of

harvested acres the Secretary determines (on the basis of the weighted national average of the farm established yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1985/86 marketing year. If the Secretary determines that carryover stocks of rice are excessive or an increase in stocks is needed to assure a desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. Section 101(i)(5)(A) provides that, if an acreage reduction program is implemented for the 1985 crop of rice, the NPA shall not be applicable to such crop.

4. Voluntary Reduction Percentage. Section 101(i)(4)(C) provides that the 1985 individual farm program acreage of rice eligible for payments shall not be reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer voluntarily reduces the acreage of rice planted for harvest on the farm from the 1985-crop established rice acreage base by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1985 crop. Section 101(i)(5)(A) provides that, if an acreage reduction program is implemented for the 1985 crop of rice, the voluntary reduction percentage shall not be applicable to such crop.

5. Acreage Reduction Program (ARP). (a) Section 101(i)(5)(A) of the 1949 Act provides that, except as provided in paragraph (b) below, the Secretary may establish a limitation on the acreage planted to rice if the Secretary determines that the total supply of rice, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Such limitation is to be achieved by applying a uniform percentage reduction to the acreage base for each rice-producing farm. Producers who knowingly produce rice in excess of the permitted rice acreage for the farm shall be ineligible for rice loans, purchases and payments with respect to that farm. The Secretary is required to announce whether an acreage reduction program is to be in effect for the 1985 crop of rice no later than January 31, 1985.

(b) Section 101(i)(5)(A) of the 1949 Act provides that, for the 1985 crop of rice, if the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity

of rice produced in the United States during calendar year 1985), will exceed twenty-five million hundredweight, the Secretary shall provide for a combination of an acreage limitation program and a land diversion program under which the acreage planted to rice for harvest on the farm would be limited to the acreage base for the farm reduced by a total of not less than 25 percent, consisting of a reduction of 20 percent under the acreage limitation program and a reduction under the land diversion program equal to the difference between the total reduction for the farm and the 20-percent reduction under the acreage limitation program.

(c) Section 101(i)(5)(A) of the 1949 Act further provides that the acreage base for any farm for the purpose of determining any reduction required to be made for any year shall be the acreage planted on the farm to rice for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to rice for harvest in the two crop years immediately preceding the year for which the determination is made. Acreage planted to rice for harvest shall include any acreage which the producers were prevented from planting to rice or other nonconserving crop in lieu of rice because of drought, flood, or other natural disaster, or other condition beyond the control of the producers. In addition, a number of acres on the farm determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of rice times the number of acres actually planted to rice by (2) the number of acres authorized to be planted to rice under the limitation established by the Secretary, shall be devoted to conservation uses in accordance with regulations issued by the Secretary.

6. Use of Acreage Conservation Reserve. Section 101(i)(5)(A) of the 1949 Act provides that the Secretary may permit all or any part of designated acreage conservation reserve to be devoted to sweet sorghum, hay and grazing or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodities, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of price support programs, and will not affect farm income adversely.

7. Cash Land Diversion Program (CLD). (a) Section 101(i)(5)(B) of the 1949

Act provides that, except as provided in paragraph (b) below, the Secretary may make cash land diversion payments to producers of rice, whether or not an acreage limitation for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(b) If the Secretary implements a land diversion program for the 1985 crop of rice under the provisions of Section 101(i)(5)(A) of the 1949 Act, the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of rice whose acreage planted to rice for harvest on the farm is reduced so that it does not exceed the rice acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 percent, in addition to the reduction required under the acreage limitation program under Section 101(i)(5)(A), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the rice acreage base under the land diversion program. Diversion payments made to producers shall be made in an amount computed by multiplying (1) the diversion payment rate, by (2) the farm program payment yield, by (3) the additional acreage diverted under the CLD program.

The diversion payment rate shall be not less than \$2.70 per hundredweight for the 1985 crop of rice. If the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (excluding 1985-crop rice) will exceed (1) 35 million hundredweight,

such rate shall be not less than \$3.25 per hundredweight, and (2) 42.5 million hundredweight, such rate shall not be less than \$3.50 per hundredweight.

8. *Offsetting Compliance.* Section 101(i)(9) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines necessary to carry out the rice program. If offsetting compliance were required, owners and operators of farms would have to assure that all of the farms in which they have an interest are in compliance with program requirements which are specified with respect to the rice program in order to be eligible for program benefits.

9. *Binding Program Contracts.* Section 101(i)(9) of the 1949 Act authorizes the Secretary to require that producers desiring to participate in the rice program enter into binding contracts with CCC. These contracts may provide for liquidated damages in the event producers do not fulfill the terms and conditions of the contracts.

10. *Advance Deficiency and Diversion Payments.* Section 101(i)(5)(B) of the 1949 Act provides that the Secretary shall make not less than 50 percent of any diversion payments to producers of the 1985 crop as soon as practicable after a producer enters into a land diversion contract. Section 107(C)(b)(1) of the 1949 Act provides that, if the Secretary establishes an acreage limitation program for rice and determines that deficiency payments will likely be made, the Secretary may make available advance deficiency payments to producers who agree to participate in such a program.

Summary of Comments Received

A notice that the Secretary was preparing to make determinations with respect to the 1985 crop of rice was published in the Federal Register on June 6, 1984 (49 FR 23421) and provided for a 60-day comment period. Comments from thirty-seven respondents, representing seventeen producers, eight state/national organizations, six producer cooperatives, four businesses, and two State ASC Committees, were received within the comment period. Comments were received from all major rice producing States. The following is a summary of these comments.

1. *Loan and Purchase Level:* With respect to the loan and purchase level, twenty-one comments were received. Thirteen favored a loan and purchase level of \$8.00, and six favored a level of \$8.93 or higher. Others favored a higher rate, if combined with an export Payment-In-Kind Program, or retaining the 1984 loan and purchase level.

2. *Established ("Target") Price:* Eighteen comments were received. Thirteen favored setting the established price at \$11.90, the statutory minimum. Four favored a price of \$12.40 or higher, and one favored the elimination of an established price.

3. *Acreage Reduction (ARP)/Cash Land Diversion (CLD):* Twenty-one comments were received regarding the combined acreage reduction/cash land diversion options. Ten favored a 20-percent ARP/5-percent CLD program or other 25 percent reduction programs, ten favored higher levels of required base reduction, and one favored a 20-percent ARP only. Nearly all cooperatives favored the 20-percent ARP/5-percent CLD program.

4. *Loan Rates and Average Quality by Class:* Eight comments were received. Six favored a continuation of 1984-crop rates, one favored rates based on market-prices, and one supported a large difference between class rates. No comments were received regarding appropriate national average quality and milling outturns for use in determining initial farm stored loan rates by class.

5. *Loan Maturity Rate:* Twenty comments were received regarding the rice loan maturity date. In general, California respondents favored a June 30 maturity date, while respondents in the Southern States generally favored no change to the current single maturity date. Four comments favored establishing a nine-month anniversary loan.

6. *Haying and Grazing of Acreage Conservation Reserve (ACR) Land:* Seventeen comments were received. Six favored unrestricted or only partially restricted haying and grazing, five favored prohibiting any haying or grazing, and six favored grazing but opposed haying of ACR acreage.

7. *Offsetting Compliance:* Fifteen comments were received. Thirteen opposed and two supported the imposition of offsetting compliance requirements.

8. *Binding Contracts:* Eleven comments were received, all in favor of requiring binding contracts for program participants.

9. *Determination of Base:* Ten comments were received. Six favored the use of the average of 1983 and 1984 acreages, one favored use of 1984 acreages, and three favored other methods of determining base acreage.

10. *Cash Land Diversion Payment Rate:* Four comments were received regarding the CLD rate, suggesting rates of \$3.50 and \$4.00 per hundredweight and \$80.00 per acre.

11. *Other Provisions:* Two comments were received regarding loan discounts for grade, one favoring no change from the current discounts and one favoring lower discounts. Five comments were received regarding proclamation of an NPA and voluntary reduction percentage. No comments were received regarding (1) an appropriate level of marketing year ending stocks which is not considered excessive, (2) commodity eligibility, (3) storage requirements, or (4) estimated producer participation under the considered options.

On September 14, 1984, the Secretary announced by press release the various program determinations for the 1985 crop of rice. The purpose of this notice is to affirm the program determinations which were previously announced.

Determinations

1. *Loan and Purchase Level.* In accordance with Section 101(i)(1) of the 1949 Act, it has been determined that the loan and purchase level shall be \$8.00 per hundredweight for the 1985 crop of rice. The Secretary has determined that a loan and purchase rate at a higher level would substantially discourage the exportation of rice and result in excessive stocks of rice in the United States. The whole kernel loan rate shall be \$14.53 per hundredweight for long grain rice and \$10.50 per hundredweight for medium and short grain rice. The broken kernel rate shall be \$6.02 hundredweight for all classes of rice. The long and medium grain whole kernel and the broken kernel rates were reduced from the 1984 crop rates to reflect the greater incidence of long grain production.

The initial value of farm stored rice loans will be based on the national average loan rate of the type of rice used by the producer as loan collateral. This procedure was established for the 1984 and subsequent rice programs to reduce problems caused by excessive loan valuations. The national average rough rice rates for farm stored loans will be \$8.68 per hundredweight for long grain and \$6.49 per hundredweight for medium and short grain rice. The settlement of a farm-stored loan for which rice pledged as collateral is forfeited to CCC will continue to be based on the type and actual milling outturn of the rice. Loan discounts for grade and grading factors will be unchanged from the 1984-crop discount schedule.

2. *Established (Target) Price.* In accordance with Section 101(i)(2)(C) of the 1949 Act, it has been determined that the established price for the 1985 crop of rice shall be \$11.90 per

hundredweight, the statutory minimum level. This price level will minimize deficiency payments while providing an attractive inducement for program participation.

3. *Acres Reduction Program/Cash Diversion Program.* In accordance with Section 101(i)(5) (A) and (B) of the 1949 Act and based on the estimate of the quantity of rice that will be on hand in the United States on July 31, 1985 (excluding 1985-crop rice), it has been determined that a combined 20-percent acres reduction program and 15-percent cash land diversion program shall be applicable to the acres planted to rice in 1985. Producers must limit their 1985 plantings to no more than 65 percent of rice bases established for their farms and devote to an acres conservation reserve at least 30.77 percent of the farms' 1985 planted rice acres plus 15 percent of the farms' rice acres bases in order to be eligible for loans, purchases, and payments for the 1985 crop of rice. The diversion payment rate for the 1985 crop of rice will be \$3.50 per hundredweight since it is estimated that the quantity of rice on hand in the United States on July 31, 1985 (excluding 1985-crop rice) will exceed 42.5 million hundredweight. The Secretary has determined that the total supply of rice, in the absence of a 20 percent ARP and 15 percent CLD, will be excessive taking into account the need for an adequate carryover of all types of rice to maintain reasonable and stable supplies and prices and to meet a national emergency. It is believed that a program providing a lower combined percentage reduction would result in higher total program outlays and increasing stocks.

The 1985 farm acres base for rice shall be the average of the acres which was planted and considered planted to rice for harvest in 1983 and 1984. Determining the farm acres base in this manner is consistent with provisions of the 1985 wheat, feed grain, and upland cotton programs and was selected to moderate base growth caused by prior year overplantings on non-participating farms.

Land which is designated for the acres conservation reserve must be cropland that was devoted to row crops or small grains in two of the last three years, or, for farms with a history of summer fallow, one of the last two years. Eligible land on which permanent conservation practices were established in 1982 or a subsequent year will be eligible for designation as acres conservation reserve under the acres reduction program so long as the conservation practice is maintained.

These conservation practices will be eligible for cost-share assistance under the Agricultural Conservation Program.

4. *National Program Acreage (NPA).* In accordance with Section 101(i)(5)(A) of the 1949 Act, it has been determined that the NPA will not be applicable to the 1985 crop of rice since an acres reduction program has been announced.

5. *Voluntary Reduction Percentage.* In accordance with Section 101(i)(5)(A) of the Act, it has been determined that the voluntary reduction percentage will not be applicable to the 1985 crop of rice since an acres reduction program has been announced.

6. *Haying and Grazing of the Acres Conservation Reserve.* In accordance with Section 101(i)(5)(A) of the Act, it has been determined that rice producers shall not be permitted to harvest cover for hay or to plant alternate crops on land designated as ACR. Grazing of land designated as ACR will be permitted except during the five principal growing months as determined by the State ASC committees. This provision will minimize any adverse effects on hay or feed producers and is consistent with provisions of the wheat, feed grains, and upland cotton programs.

7. *Offsetting Compliance.* It has been determined that offsetting compliance is not necessary to assist in adjusting the total national acres of rice to desirable goals and will not be required as a condition of eligibility for a rice producer to participate in the 1985 rice program. An offsetting compliance requirement is considered likely to reduce participation in the rice program.

8. *Binding Program Contracts.* It has been determined that contracts signed by program participants for the combined acres reduction and cash land diversion program will be binding at the end of the signup period and will provide for liquidated damages for failure to comply with the terms and conditions of such contracts. This provision should encourage producers to comply with the terms and conditions of the contract and result in a more effective program.

Authority: Sec. 101(i), 95 Stat. 1242, as amended (7 U.S.C. 1441(i)); Sec. 1101, 95 Stat. 1263. (7 U.S.C. 1308).

Signed in Washington, D.C., January 8, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-978 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-05-M

1985 Upland Cotton Program; Determinations Regarding the Proclamation of 1985-Crop Program Provisions for Upland Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determinations of the 1985 upland cotton loan rate, established (target) price, acres reduction program, cash land diversion program, and related program provisions.

SUMMARY: The purpose of this notice is to affirm the following determinations which were made by the Secretary of Agriculture on September 14 and October 16, 1984, with respect to the 1985 crop of upland cotton: (a) A loan rate for Strict Low Middling one-and-one-sixteenth-inch upland cotton (micronaire 3.5 through 4.9) of 57.30 cents per pound; (b) an established (target) price of 81.00 cents per pound; (c) an acres reduction program with a uniform required reduction of 20 percent; (d) a cash land diversion program of 10 percent with a payment rate of 30 cents per pound; (e) a seed cotton loan rate comparable to the loan rate for lint cotton; and (f) related program provisions. These determinations are required to be made in accordance with section 103(g) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act").

EFFECTIVE DATE: This notice of determinations is effective for the 1985 crop of upland cotton.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Analysis Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447-7954. The Final Regulatory Impact Analysis describing the options considered in developing this Notice of Determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The titles and numbers of the federal assistance programs that this notice applies to are: Title—Cotton Production

Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that a notice of proposed rulemaking be published in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of these determinations.

A supplemental environmental impact statement has been completed and it has been determined this action will have no significant adverse environmental impacts.

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

This notice sets forth determinations with respect to the following issues which are briefly described:

A. *The Loan Level.* Section 103(g)(1) of the 1949 Act provides that the loan level for 1985-crop upland cotton must reflect for Strict Low Middling one-and-one-sixteenth-inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States, the smaller of: (1) 85 percent of the average price (weighted by market and month) of Strict Low Middling one-and-one-sixteenth-inch cotton as quoted in the designated United States spot markets during three years of the five-year period ending July 31, 1984, excluding the year of the highest and lowest average prices (hereinafter referred to as the "spot market calculation"), or (2) percent of the average, for the fifteen week period beginning July 1, 1984, of the five lowest priced growths of the growths quoted for Middling one-and-three-thirty-seconds-inch cotton, C.I.F. northern Europe (adjusted downward by the average difference during the period April 15, 1984, through October 15, 1984, between such average northern European price quotations and the market quotations in the designated United States spot markets for Strict Low Middling one-and-one-sixteenth-inch cotton (micronaire 3.5 through 4.9)) (hereinafter referred to as the "northern European calculation"). The loan level cannot be less than 55 cents per pound. If the northern European calculation is less than the United States spot market calculation, the Secretary may increase the loan level, but not in excess of the United States spot market calculation.

B. *Established (Target) Price.* Section 103(g)(3)(B) of the 1949 Act provides that the established price for 1985-crop

upland cotton shall not be less than the higher of (a) 81 cents per pound plus any adjustments for changes in production costs or (b) 120 percent of the loan level determined in accordance with section 103(g)(1) of the 1949 Act. Section 103(g)(3)(C) of the 1949 Act provides that the established price may be adjusted as the Secretary determines to be appropriate to reflect any change in: (1) The average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made (1983 and 1984) from (2) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made (1982 and 1983). The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

C. *The National Program Acreage (NPA).* Section 103(g)(5) of the 1949 Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1985 crop by November 1, 1984. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision shall be announced as soon as it has been made. The NPA shall be the number of harvested acres the Secretary determines necessary, based on the estimated weighted national average of the farm program yields for the 1985 crop, to produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1985-86 marketing year. The Secretary may make such adjustments in the NPA as he determines necessary, taking into consideration the estimated carryover supply, so as to provide for an adequate but not excessive total supply of cotton for the 1985-86 marketing year. In no event shall the national program acreage be less than 10 million acres. If an acreage reduction program is implemented for the 1985 crop of upland cotton, the NPA determination is not applicable.

D. *Voluntary Reduction Percentage.* Section 103(g)(7) of the 1949 Act provides that the individual farm program acreages for the 1985 crop of upland cotton that are eligible for payments shall not be further reduced

by application of an allocation factor if the producer reduces the acreage of upland cotton planted for harvest on the farm from the acreage base established for the farm for the 1985-crop of upland cotton by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1985 crop. If an acreage reduction program is implemented for the 1985 crop of upland cotton, the voluntary reduction percentage shall not be applicable to such crop.

E. *Acreage Reduction Program.* (1) Except as provided in paragraph (2) below, section 103(g)(9)(A) of the 1949 Act provides that the Secretary may establish a limitation on the acreage planted to upland cotton if the Secretary determines that the total supply of upland cotton will, in the absence of such limitation, be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.

(2) For the 1985 crop of upland cotton, if the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed 3.7 million bales, the Secretary: (a) Shall provide for a land diversion program as described under section 103(g)(9)(B) of the 1949 Act under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not less than 5 percent and (b) may provide for an acreage limitation program as described under section 103(g)(9)(A) of the 1949 Act under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 20 percent in addition to the land diversion program. If the Secretary implements a combined acreage limitation program and land diversion program, any reduction required by the Secretary in excess of 25 percent of the acreage base for the farm shall be made under the land diversion program.

(3) Any acreage limitation under paragraphs (1) and (2) shall be achieved by applying a uniform percentage reduction to the acreage base for each cotton-producing farm. Producers who knowingly produce cotton in excess of the permitted cotton acreage for a farm shall be ineligible for cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation shall be the acreage

planted on the farm to upland cotton for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to upland cotton for harvest in the two crop years immediately preceding the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to upland cotton for harvest shall include any acreage which producers were prevented from planting to cotton or other nonconserving crop because of a natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect crop-rotation practices and other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres actually planted to upland cotton, by (b) the number of acres authorized to be planted to upland cotton in accordance with the acreage limitation established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an acreage limitation is in effect for any crop, the national program acreage, program allocation factor, and voluntary reduction provisions of Section 103(g) of the 1949 Act are not applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to upland cotton for harvest within the permitted upland cotton acreage established for the farm under the acreage reduction program.

F. Cash Land Diversion Program. (1) Except as provided in paragraph (2), section 103(g)(9)(B) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an acreage limitation for upland cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage to desirable goals. Such land diversion payments shall be made to producers who devote to conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers or

in such manner as the Secretary determines appropriate.

(2) Notwithstanding the provisions of paragraph (1), if the Secretary implements a land diversion program for the 1985 crop of upland cotton under the provisions of section 103(g)(9)(A) of the 1949 Act, the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of upland cotton whose acreage planted to upland cotton on the farm is reduced so that it does not exceed the upland cotton acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 percent, in addition to the reduction required under the acreage limitation program under section 103(g)(9)(A) of the 1949 Act, if any, and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the upland cotton acreage base under section 103(g)(9)(B) of the 1949 Act. Such payments shall be made in an amount computed by multiplying the diversion payment rate, by the farm program payment yield for the crop, by the acreage diverted. The diversion payment rate established by the Secretary under the provisions of this paragraph shall be not less than 27.5 cents per pound. If the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed (a) 4.1 million bales, such diversion payment rate shall be established by the Secretary at not less than 30.0 cents per pound, and, (b) 4.7 million bales, such diversion payment rate shall be established by the Secretary at not less than 35.0 cents per pound. The Secretary shall make not less than 50 percent of any diversion payments required to be made to producers of the 1985 crop as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance. If a producer fails to comply with a land diversion contract after obtaining an advance payment, the producer shall repay the advance payment immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance payment.

(3) If the Secretary implements a land diversion program, the producers on a farm must comply with the terms and conditions of such program as a condition of eligibility for program benefits.

G. Haying and Grazing of Acreage Conservation Reserve (ACR). Section 103(g)(9)(A) of the 1949 Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses (the "Acreage Conservation Reserve") shall assure protection of such acreage from weeds and wind and water erosion. The Secretary may authorize haying and grazing of land devoted to the Acreage Conservation Reserve (ACR).

H. Binding Program Contracts. For the 1983 and 1984 crops of upland cotton, contracts signed by program participants were binding contracts. The contracts provided for liquidated damages in the event the producer did not fulfill the terms and conditions of the contract.

I. Advance Deficiency Payments. Section 107C(b)(1)(B) of the 1949 Act provides that if the Secretary establishes an acreage limitation (reduction) program for upland cotton and determines that deficiency payments will likely be made for such crop, the Secretary may make available advance deficiency payments to producers who agree to participate in such program.

J. Offsetting Compliance. Section 103(g)(14) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the upland cotton program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, owners and operators of farms, in order to be eligible for program benefits, would have to ensure that all of the farms in which they had an interest were either in compliance with program requirements or that the acreages of upland cotton planted for harvest on each of such farms did not exceed the upland cotton acreage bases which were established for such farms.

K. Loan Level for Seed Cotton. Section 103(g)(18) of the 1949 Act provides that, in order to assist cotton producers in the orderly ginning and marketing of their cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Commodity Credit Corporation Charter Act.

Discussion of Comments

A notice requesting public comments on program determinations for the 1985 crop of upland cotton was published in the *Federal Register* on June 6, 1984 (49 FR 23413). A total of 21 responses was

received. A majority of the comments are grouped and summarized into the following 10 categories: (1) The loan rate; (2) the target price; (3) the national program acreage; (4) the acreage reduction and land diversion levels; (5) the land diversion payment rate; (6) binding program contracts; (7) the acreage base determination; (8) haying and grazing of ACR; (9) offsetting compliance; and (10) seed cotton loan rate.

1. Loan Rate. A total of 18 comments was received concerning the loan rate. Thirteen respondents favored a loan rate based on the statutory formula, 4 respondents requested a loan level above the statutory formula, and 1 recommended a loan rate below the statutory formula.

2. Target Price. Fourteen comments on the target price were received. Of these, 7 favored a target price of 81 cents per pound, 5 recommended a target price above 81 cents per pound, 1 favored a target price below 81 cents per pound and 1 opposed the target price.

3. National Program Acreage (NPA). Two comments opposing the national program acreage were received.

4. Acreage Reduction and Land Diversion Levels. A total of 19 comments were received regarding acreage reduction and/or cash land diversion levels. Four respondents recommended a 20 percent acreage reduction program with a 5 percent cash land diversion program. Three comments recommended a 15 percent acreage reduction program with a 10 percent cash land diversion program. Five respondents favored reduction programs but did not specify a level. Four comments favored reductions other than a 20 percent acreage reduction with a 5 percent cash land diversion or a 15 percent acreage reduction with a 10 percent cash land diversion; and three respondents opposed any reduction program.

5. Land Diversion Payment Rate. The one respondent favored a land diversion payment rate above 27.5 cents.

6. Binding Program Contracts. Twelve comments were received concerning program contracts. Eleven respondents favored some type of binding contract and one opposed binding contracts. Four of the respondents who recommended the use of binding contracts also recommended that the enrollment period be extended if binding contracts are required.

7. Acreage Base Determination. Five comments were received favoring the use of the average of the acres planted and considered planted for the 1983 and 1984 crops for the purpose of determining the farm acreage base.

8. Haying and Grazing. Seven respondents commented on haying and grazing of land designated as ACR. One respondent favored year-round haying and grazing, four favored grazing during the six nonprincipal growing months, and two opposed haying and grazing.

9. Offsetting Compliance. Eleven comments opposing offsetting compliance were received.

10. Seed cotton loan rate. Seven respondents commented on the seed cotton loan program. Six respondents favored the current formula of adjusting the seed cotton to a lint basis and applying the loan rates applicable to lint cotton. One respondent opposed the seed cotton loan program.

A number of the determinations with respect to the upland cotton program are required by section 103(g) of the 1949 Act to be made not later than November 1 of the calendar year preceding the year for which the determinations are made. On September 14 and October 16, 1984, the Secretary announced by press releases the program provisions for the 1985 crop of upland cotton. Since the only purpose of this notice is to affirm the program determinations previously announced, it has been determined that no further public rulemaking is required with respect to the following determinations:

Determinations

A. Loan Level. Based on the formula prescribed in section 103(g)(1) of the 1949 Act, the loan rate for the 1985 crop of Strict Low Middling one-and-one-sixteenth-inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States has been determined to be 57.30 cents per pound.

The United States spot market calculation is as follows:

(1) Weighted average spot market prices for Strict Low Middling one-and-one-sixteenth-inch upland cotton micronaire 3.5 through 4.9:

August 1979 through July 1980—68.87 cents

August 1980 through July 1981—83.77 cents

August 1981 through July 1982—57.66 cents

August 1982 through July 1983—61.79 cents

August 1983 through July 1984—71.58 cents

(2) Average spot market price of the five years, excluding the highest and lowest years—67.41 cents.

(3) Loan rate based on U.S. spot market calculation—57.30 cents.

The northern European calculation is as follows:

(1) Average northern European quotation for Middling one-and-three-thirty-seconds-inch cotton, July 1 through October 12, 1984—75.60 cents.

(2) Average difference between average northern European quotation and the U.S. spot market average for Strict Low Middling one-and-one-sixteenth-inch cotton (micronaire 3.5 through 4.9), April 15 through October 15, 1984—11.17 cents.

(3) Adjusted northern European average—64.43 cents.

(4) 90 percent of adjusted average—57.99 cents.

The smaller of the two calculations is the U.S. spot market calculation. Therefore, the 1985 loan rate is 57.30 cents per pound.

B. Established (Target) Price. In accordance with the provisions of section 103(g)(3) of the 1949 Act, the 1985 established (target) price has been determined to be the statutory minimum level of 81 cents per pound. The target price of 81 cents per pound will attract adequate participation in the acreage reduction program. It is felt that any further increases in the target price would encourage excessive upland cotton production.

C. National Program Acreage. In accordance with section 103(g)(9)(A) of the 1949 Act, it has been determined that the NPA will not be applicable to the 1985 crop of upland cotton since an acreage reduction program has been announced.

D. Voluntary Reduction Percentage. In accordance with section 103(g)(9)(A) of the 1949 Act, it has been determined that the voluntary reduction percentage will not be applicable to the 1985 crop of upland cotton since an acreage reduction program has been announced.

E. Acreage Reduction Program and Cash Land Diversion Program. The Secretary has estimated that 4.5 million bales of upland cotton will be on hand in the United States on July 31, 1985. Therefore, in accordance with the provisions of section 103(g)(9)(A) of the 1949 Act, it has been determined that a 20-percent acreage reduction program and a 10-percent cash land diversion program will be in effect for the 1985 crop of upland cotton.

In order to be eligible for loans and payments on the 1985 crop of upland cotton, producers must plant no more than 70 percent of their farm acreage base. In addition, producers must devote a number of acres equal to the sum of (1) 28.57 percent times the acres actually planted to upland cotton and (2) 10 percent of the acreage base, to an acreage conservation reserve in accordance with regulations issued by

the Secretary. The acreage base for any farm to be used for the purpose of determining the reduction required to be made shall be the average of the upland cotton acres which are planted and considered planted for the 1983 and 1984 crops.

Diversion payments will be made to upland cotton producers who meet the specified program requirements. The Secretary has estimated that the quantity of upland cotton on hand in the United States on July 31, 1985, will exceed 4.1 million bales. Therefore, in accordance with section 103(g)(9)(b) of the 1949 act, the diversion payment rate shall be \$.30 per pound. Diversion payments shall be computed by multiplying the diversion payment rate of \$.30 per pound, by the farm program payment yield, by 10 percent of the farm acreage base. One-half of the total diversion payment will be made available as soon as possible after a producer enters into a land diversion contract with the Secretary. If a producer fails to comply with a land diversion contract after obtaining an advance payment, the producer shall repay immediately the advance payment plus interest.

F. Haying and grazing of Acreage Conservation Reserve. In accordance with section 103(g)(9)(A) of the 1949 Act, the Secretary has determined that haying of cover crops on ACR acreage will not be permitted. However, ACR acreage may be grazed except during the five principal growing months as designated by county Agricultural Stabilization and Conservation (ASC) committees. In the event of a natural disaster, emergency haying and grazing may be approved as needed on a county-by-county basis.

G. Binding Program Contracts. Contracts signed by program participants for the acreage reduction and cash land diversion programs will be considered binding at the end of the sign-up period and will provide for the payment of liquidated damages by producers who do not comply with contractual requirements.

H. Advance Deficiency Payments. The Secretary has determined that deficiency payments will likely be made to producers participating in the upland cotton program. Therefore, in accordance with section 107(b)(1)(B) of the 1949 Act, it has been determined that advance deficiency payments equal to one-half the total estimated deficiency payment will be made available to a producer as soon as possible after the producer enters into the program contract.

I. Offsetting Compliance. In accordance with section 103(g)(14) of the

1949 Act, it has been determined that offsetting compliance will not be required as a condition of eligibility for program benefits.

J. Loan Level for Seed cotton. In accordance with section 103(g)(18) of the 1949 Act, recourse loans will be offered on 1985-crop seed cotton. The seed cotton will be adjusted to a lint basis for loan-making purposes and the loan rates applicable to lint cotton will be used.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and 714c); secs. 101, 103(g), 107C and 401, 66 Stat. 758, as amended, 95 Stat. 1234, as amended, 96 Stat. 766, 63 Stat. 1054, as amended (7 U.S.C. 1441, 1444, 1445b-2, 1421).

Signed at Washington, D.C. January 8, 1985.
Everett Rank,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-1021 Filed 1-11-85; 8:45 am]

BILLING CODE 3410-05-M

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Renewal

January 4, 1985.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463) and the Office of Management and Budget Circular No. A-63, as Revised, I have determined that the renewal of the General Advisory Committee (GAC) is in the public interest. This determination is based on the important work the GAC conducts in advising the President, the Secretary of State and the Director of the U.S. Arms Control and Disarmament Agency (ACDA) on matters effecting arms control, disarmament, and world peace.

This renewal is effective January 5, 1985, and is for a period of two years.

Dated: January 4, 1985.
Kenneth Adelman,
Director.
[FR Doc. 85-974 Filed 1-11-85; 8:45 am]
BILLING CODE 6620-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 82-179A]

Antiboycott Violations; Frank Forsberg; Order

The Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of

the Export Administration Act of 1979, as amended, [50 U.S.C. app. 2401, *et seq.* (1982) (the "Act")]¹ and Part 368 of the Export Administration Regulations [currently codified at 15 CFR Part 368 *et seq.* (1984) (the "Regulations")] against Frank Forsberg ("Forsberg"), a Texas resident, based on allegations set forth in the Proposed Charging Letter, dated April 23, 1984, incorporated herein by this reference, that, on or about September 4, 1982, Forsberg committed one violation of Part 369 of the Regulations, promulgated to implement the Act, in that Forsberg, a United States person as defined in the Regulations, with respect to his activities in the interstate or foreign commerce of the United States, and with intent to comply with, further, or support an unsanctioned foreign boycott, took a discriminatory action against an individual who is a United States person on the basis of that individual's religion, an activity prohibited by § 369.2(b) of the Regulations and not excepted; and

The Department and Forsberg having entered into a Consent Agreement whereby Forsberg has agreed to settle this matter by paying to the Department a civil penalty in the amount of \$10,000 and by accepting a one year denial of his export privileges to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Oman, Qatar, Saudi Arabia, Yemen Arab Republic, People's Democratic Republic of Yemen, Syria and Iraq; and

The terms of the Consent Agreement having been approved by me in complete settlement of the matter;

It is therefore ordered that First, a civil penalty in the amount of \$10,000 is assessed against Forsberg;

Second, Forsberg shall pay the Department the sum of \$10,000 within twenty (20) business days of the service of this Order, as specified in the attached instructions;

Third, for a period ending one year from the date of this Order, Forsberg is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Oman, Qatar, Saudi Arabia, Yemen Arab Republic, People's Democratic Republic of Yemen, Syria and Iraq. Subject to paragraph FOURTH below,

¹ The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)).

participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (a) As a party or representative of a party to any export license application submitted to the Department; (b) in the preparation or filing with the Department of any export license application or reexportation authorization, or of any document to be submitted therewith; (c) in the obtaining from the Department or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, to be exported from the United States and subject to the Regulations; and (e) in the financing, forwarding, transporting, or other services or such commodities or technical data;

Fourth, such denial of export privileges shall extend only to U.S.-origin commodities and technical data which are subject to the Act and the Regulations;

Fifth, such denial of export privileges shall extend not only to Forsberg, but also to his agents and employees;

Sixth, no person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, participate, directly or indirectly, in any manner or capacity in any export by Forsberg prohibited by the terms of this Order. Such participation shall include, but not be limited to: (a) Applying for, obtaining, transferring, or using any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export prohibited by the terms of this Order; or (b) carrying on negotiations with respect to such export, ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing or participating in any export prohibited by the terms of this Order.

This Order is effective immediately.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

Entered this 3d day of January 1985.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of Antiboycott Compliance, Room 3836, 14th Street and Constitution Avenue, NW., Washington, DC. 20230.

ATTN: Dexter M. Price, Director of Enforcement.

[FR Doc. 85-991 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-25-M

[Case No. 82-179]

Antiboycott Violations; Lockheed Engineering & Management Services Co., Inc., Order

The Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended, [50 U.S.C. app. 2401, *et seq.* (1982)] (the "Act") 1 and Part 388 of the Export Administration Regulations [currently codified at 15 CFR Part 368 *et seq.* (1984) (the "Regulations")] against Lockheed Engineering & Management Services Co., Inc. ("LEMSCO"), a Texas corporation, based on allegations set forth in the Proposed Charging Letter, dated April 23, 1984, incorporated herein by this reference, that, on or about September 4, 1982, LEMSCO committed one violation of Part 369 of the Regulations, promulgated to implement the Act, in that LEMSCO, a United States person as defined in the Regulations, with respect to its activities in the interstate or foreign commerce of the United States, and with intent to comply with, further, or support an unsanctioned foreign boycott, took a discriminatory action against an individual who is a United States person on the basis of that individual's religion, an activity prohibited by § 369.2(b) of the Regulations and not excepted; and

The Department of LEMSCO having entered into a Consent Agreement whereby LEMSCO has agreed to settle this matter by paying to the Department a civil penalty in the amount of \$10,000 and by accepting a one year denial of its export privileges to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Oman, Qatar, Saudi Arabia,

¹ The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)).

Yemen Arab Republic, the People's Democratic Republic of Yemen, Syria and Iraq conditionally suspended except with respect to Saudi Arabia as hereinafter set forth; and

The terms of the Consent Agreement having been approved by me in complete settlement of this matter:

It is therefore ordered that:

First, a civil penalty in the amount of \$10,000 is assessed against LEMSCO;

Second, LEMSCO shall pay the Department the sum of \$10,000 within twenty (20) business days of the service of this Order, as specified in the attached instructions;

Third, for a period ending one year from the date of this Order, LEMSCO is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Oman, Qatar, Saudi Arabia, Yemen Arab Republic, People's Democratic Republic of Yemen, Syria and Iraq. Subject to paragraph FOURTH below, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (a) As a party or representative or a party to any export license application submitted to the Department; (b) in the preparation or filing with the Department of any export license application or reexportation authorization, or of any document to be submitted therewith; (c) in the obtaining from the Department or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, to be exported from the United States and subject to the Regulations; and (e) in the financing, forwarding, transporting, or other services of such commodities or technical data;

Fourth, such denial of export privileges shall extend only to U.S.-origin commodities and technical data which are subject to the Act and the Regulations. Such denial shall not apply to, and shall have no effect whatsoever on, the following: (i) Transactions by companies which are not controlled-in-fact by LEMSCO, and (ii) activities pursuant to existing, anticipated or future contracts with the United States Departments of State or Defense, or the National Aeronautics and Space Administration, or any constituent unit of any of the foregoing;

Fifth, such denial of export privileges shall extend to LEMSCO, any controlled-in-fact subsidiaries of, or successor in business to, LEMSCO or such subsidiary, and to any employee or agent of the foregoing when acting for such employer of principal;

Sixth, no person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, participate, directly or indirectly, in any manner or capacity, in any export by LEMSCO prohibited by the terms of this Order. Such participation shall include, but not be limited to: (a) Applying for, obtaining, transferring, or using any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export prohibited by the terms of this Order; or (b) carrying on negotiations with respect to such export, ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing or participating in any export prohibited by the terms of this Order;

Seventh, the denial of export privileges to Jordan, Lebanon, Kuwait, United Arab Emirates, Bahrain, Libya, Oman, Qatar, Yemen Arab Republic, and People's Democratic Republic of Yemen, Syria and Iraq shall be suspended for a period of one year from the date of entry of this Order; provided, however, that a one year period of denial of export privileges shall be imposed with respect to the twelve (12) countries referenced in this paragraph if LEMSCO is found to have violated the antiboycott provisions of the Act, Part 369 of the Regulations, or this Order during the one year period from the date of this Order. The suspension of the denial does not apply to Saudi Arabia.

This Order is effective immediately.

Entered this 3d day of January, 1985.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to: U.S. DEPARTMENT OF COMMERCE, OFFICE OF ANTIBOYCOTT COMPLIANCE, Room 3886, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230

ATTN: Dexter M. Price, Director of Enforcement.

[FR Doc. 85-990 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-25-M

[C-307-403]

Initiation of Countervailing Duty Investigations—Certain Carbon Steel Products From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Venezuela of certain carbon steel products, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before February 4, 1985. If our investigations proceed normally, we will make our preliminary determination on or before March 14, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Tom Bombelles or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Telephone (202) 377-3174 or 377-1769.

SUPPLEMENTARY INFORMATION:

Petition

On December 19, 1984, we received a petition in proper form from the United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of U.S. industries producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Venezuela of certain carbon steel products receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since Venezuela is a "country under the Agreement" within the

meaning of section 701(b) of the Act, Title VII of the Act applies to these investigations, and the ITC is required to determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury, to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain carbon steel products from Venezuela, and we have found that the petition meets those requirements. Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Venezuela of certain carbon steel products, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies. If our investigations proceed normally, we will make our preliminary determination on or before March 14, 1985.

Scope of the Investigation

The products covered by these investigations are certain carbon steel products, which are:

- carbon steel plate,
- hot-rolled carbon steel sheet,
- cold-rolled carbon steel sheet, and
- galvanized carbon steel sheet.

These products are more fully described in the Appendix to this notice.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Venezuela of certain carbon steel products receive benefits under the following programs which constitute subsidies. We are initiating investigations on the following allegations:

- Preferential Government Credit
- Preferential Government Loans
- Government Loan Guarantees
- Assumption of SIDOR's Hard Currency Debt
- Government Equity Infusions
- Import Duty Reductions
- Preferential Tax Incentives
- Regional Incentives
- Preferential Pricing of Inputs
- Export Subsidies
- Preferential Exchange Rates
- Export Certificates for Credit Against Income Taxes

—Preferential Export Financing
—Preferential Pricing of Inputs Used to Produce Exports

We are not initiating investigations on the following allegation:

• **Government Grants to Steel Producers** Petitioner alleges that the Venezuelan government provides grants to the steel industry. Petitioner does not provide any information demonstrating that producers or products under investigation benefit from such a program. We believe that any grants from the Venezuelan government to the steel industry will be investigated under the other subsidy allegations listed above.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidential information in our files, provided it 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.

Dated: January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

APPENDIX—Description of Products; Venezuela

1. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not pickled; not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.8620, and 607.8625 of the *TSUSA*. Semifinished products of solid rectangular cross/section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

2. The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled and as currently provided for in item 607.8320 of the *TSUSA*; and not pickled and in coils; as currently provided in item 607.6610 or

under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

3. The term "cold-rolled carbon steel flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 in thickness, whether or not in coils; as currently provided for in item 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

4. The term "Galvanized carbon steel sheet" covers hot- or cold-rolled carbon steel sheet which have been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1320, or 608.1330, of the *TSUSA*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

[FR Doc. 85-1011 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-05-M

[C-201-406]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Fabricated Automotive Glass From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers or exporters in Mexico of fabricated automotive glass, except for fabricated automotive glass manufactured and exported by L-N Safety Glass. The net bounty or grant is 4.68 percent *ad valorem* for all manufacturers and exporters except L-N Safety Glass. We determine that no benefits which constitute bounties or grants are being provided with respect to fabricated automotive glass manufactured and exported by L-N Safety Glass. L-N Safety Glass, therefore, is excluded. We are directing the U.S. Customs Service to suspend

liquidation of all entries of fabricated automotive glass from Mexico (except that manufactured and exported by L-N Safety Glass) which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this merchandise in the amounts equal to the estimated net bounty or grant.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth Haldenstein or Vince Kane, Office of Investigations, Import Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-4136 or 5414.

SUPPLEMENTARY INFORMATION:
Final Determination and Order

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in Mexico of fabricated automotive glass, as described in the "Scope of Investigation" section of this notice. The following programs are found to confer bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX); and
- Preferential Federal Tax Incentives (CEPROFI).

We determine the bounty or grant to be the rate specified in the "Suspension of Liquidation" section of this notice.

Case History

On July 31, 1984, we received a petition from PPG Industries, Inc. Because certain U.S. fabricated automotive glass manufacturers indicated opposition to the investigation, we sought information to determine whether the petition was filed on behalf of the U.S. fabricated automotive glass industry, as required by section 702(b)(1) of the Act (19 U.S.C. 1671a(b)(1)). As authorized by section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)), we excluded Ford and Libbey-Owens-Ford from consideration as part of the domestic industry because they are major importers with substantial ownership interests in the exporting companies. Most of the U.S. manufacturers of fabricated automotive glass who are not excluded support the petition. In addition, manufacturers accounting for a major proportion of U.S. production, after exclusion of these companies, support the petition also. Thus, we determine that the petitioner has standing.

In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers or exporters in Mexico of fabricated automotive glass receive bounties or grants within the meaning of section 303 of the Act.

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Although the subject merchandise is nondutiable, there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require an injury determination for nondutiable merchandise from Mexico. Therefore, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the Government of Mexico in Washington, D.C. on September 6, 1984. On October 9, 1984, we received responses to the questionnaire. We received a supplemental response on October 17, 1984. A preliminary affirmative determination was issued in this investigation on October 24, 1984, 49 FR 43984 (November 1, 1984). Verification of the responses was conducted in Mexico between November 26 and December 7, 1984. A public hearing was held on December 18, 1984, requested by petitioner and by L-N Safety Glass.

Scope of Investigation

The merchandise covered by this investigation is "fabricated automotive glass," specifically, laminated automotive glass, currently classified in item 544.4120 of the *Tariff Schedules of the United States Annotated* (TSUSA), and tempered automotive glass, currently classified under TSUSA item number 544.3100.

There are three known manufacturers which export fabricated automotive glass from Mexico to the United States. We have received information from the Government of Mexico regarding Vitro Flex, S.A. (Vitro Flex), Cristales Inastillables de Mexico (Crimamex), S.A., and L-N Safety Glass, S.A. de C.V.

The period for which we are measuring benefits is the most recent year for which we have complete data, calendar year 1983. In their responses, the Government of Mexico and respondents provided data for the applicable period.

Analysis of Programs

Throughout this notice, we have applied to the facts of the current investigation general principles described in detail in the Subsidies Appendix of the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*; 49 F.R. 18006 (April 26, 1984). Following the Subsidies Appendix, we have used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. For this purpose, we chose the effective rate published monthly by the Banco de Mexico in the *Indicadores Economicos* ("IE rate") because we verified that the nominal rates charged on FOMEX pre-export loans granted to the fabricated automotive glass companies are the effective rates. These rates are the weighted averages of the rates charged by commercial banks on short-term peso loans.

For short-term dollar-denominated loans, the benchmark used was the quarterly U.S. national weighted average rates for commercial and industrial short-term loans with maturities of less than one year, as published in the *Federal Reserve Bulletin* ("Federal Reserve rate").

Based upon our analysis of the petition and the responses to our questionnaire, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers or exporters in Mexico of fabricated automotive glass under the following programs:

A. FOMEX

FOMEX is a trust established by the Government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department, with the Bank of Mexico acting as the trustee. On July 27, 1983, FOMEX was formally incorporated into the National Bank of Foreign Trade (NBFT). The NBFT administers the financing of FOMEX loans through financial institutions, which establish contracts for lines of credit with manufacturers and exporters.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the company must have majority of Mexican capital; (3) the

articles to be exported must have a minimum of 30 percent national content in direct production costs; (4) loans granted for pre-export must be in Mexican currency while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (5) the exporter must carry insurance against commercial risks to the extent of the loans. During 1983, the maximum annual interest rate for FOMEX pre-export financing was 8 percent and for FOMEX export financing 6 percent.

Prior to our preliminary determination, in April 1984, the FOMEX interest rates were increased to 7.1 percent for export financing and 19.3 percent for pre-export financing. For export loans we have taken this program-wide change, made prior to the preliminary determination, into account for duty deposit purposes. We lacked sufficient data to do so for pre-export loans. Therefore, we used for our review period of export loans the period April 1, 1984 to June 30, 1984, which was the period subsequent to the program-wide change for which verified data are available. During April-June 1984, Vitro Flex and Crinamex received short-term export financing from FOMEX for exports to the U.S. of the subject merchandise. During 1983 Vitro Flex and Crinamex received pre-export financing from FOMEX for exports to the United States of the subject merchandise.

Since FOMEX financing provides loans for export-related purposes at interest rates less than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the exportation of fabricated automotive glass.

We used as our benchmark, for purposes of calculating the bounty or grant, the "IE" rate for peso-denominated loans and the Federal Reserve rate for dollar-denominated loans, as described *supra*. We allocated the benefit over the value of U.S. exports of fabricated automotive glass and calculated a weighted-average bounty or grant in the amount of 3.58 percent *ad valorem*.

B. CEPROFI

CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and medium-sized firms.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay

federal taxes. Certain CEPROFI certificates are granted for carrying out investment in "priority" industrial activities; others are available to all industries on equal terms.

Vitro Flex received CEPROFI for carrying out investment in priority industrial activities. These CEPROFIs were for investment to increase productivity. Because this type of CEPROFI is limited to a specific group of industries or to companies located in specific regions, we determine that this program confers a bounty or grant.

Article 25 of the decree authorizing the issuance of CEPROFIs, published in the *Diario Oficial de la Federacion* (Diario Oficial) on March 6, 1979, provides for a 4 percent supervision fee. We determine that the 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFIs, and is therefore an allowable offset from the gross bounty or grant, as provided in section 771(6)(A) of the Act. Therefore, the benefit provided by CEPROFIs is the amount of the certificate received less the supervision fee.

We allocated the CEPROFI benefit over the total sales of the subject merchandise and determined a weighted-average bounty or grant in the amount of 1.10 percent *ad valorem*.

II. Programs Determined Not to Confer Bounties or Grants

A. Subsidized Glass Inputs

Petitioner alleged that manufacturers of the subject merchandise received benefits passed on from raw material suppliers that received assistance from the Government of Mexico. Specifically, petitioner contends that producers of raw materials used as inputs in float glass received preferential loans from the Mexican Trust for Non-Metallic minerals. The benefits arising from these loans were then allegedly passed on to intermediary float glass producers and then passed on again to the producers of fabricated automotive glass.

We found during verification that the prices paid by automotive glass producers for Mexican supplied float glass are not less than prices that would otherwise be paid for the input in an arm's-length transaction. Therefore, we conclude that no benefit has been bestowed on Mexican producers of fabricated automotive glass through their purchase of Mexican-produced float glass. As no benefit is conferred at this step in the production chain, we see no need to go back in the production chain to examine transactions between Mexican float glass producers and their raw material suppliers.

B. Provision of Loans and Funds to Cover Operating Losses from Vitro S.A. to its Subsidiaries

Subsequent to the preliminary determination, petitioner alleged that Vitro Flex and Crinamex receive countervailable benefits in the form of loans and the provision of funds to cover operating losses from Vitro, S.A., a parent company. The transfer of funds within a commercial enterprise, absent government direction, is not countervailable. Therefore, we determine that this program did not confer a bounty or grant on Vitro Flex or crinamex.

C. National Preinvestment Fund for Studies and Projects (FONEP)

FONEP finances economic and technical feasibility studies as well as basic and detailed engineering projects. FONEP loans have been determined not to confer bounties or grants. (See *Final Affirmative Countervailing Duty Determination on Oil Country Tubular Goods from Mexico*, 49 FR 47055, November 30, 1984).

III. Programs Determined Not To Be Used

We determine that the following programs have not been used by manufacturers or exporters of fabricated automotive glass.

A. Article 94 Loans

Under section II of the Article 94 of the *General Law of Credit Institutions and Auxiliary Organizations* (the Banking Law), the Bank of Mexico establishes channels of credit to different sectors of economic activity. There are 12 categories of credit under section II.

Most categories carry their own maximum interest rate which is set by the Bank of Mexico. Loans granted under category 12 are targeted to exports of manufactured products. The maximum interest rate under this category is 8 percent. These loans were not used by the companies under investigation.

B. FOMEX Loans to U.S. Importers

U.S. customers of Mexican fabricated automotive glass were alleged to have received FOMEX loans. No U.S. customers of Mexican fabricated automotive glass received FOMEX loans.

C. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN)

This program is aimed at developing industrial parks and cities. The program was not used by the companies under investigation.

D. Fondo Nacional de Fomento Industrial (FOMIN)

FOMIN operates as trust fund, providing funding to certain small- and medium-sized companies by either buying stock or providing loans at rates below those of commercial lending institutions. This program was not used by the companies under investigation.

E. Preferential Prices for Natural Gas, Oil and Electricity

Prices for natural gas, oil, and electricity in Mexico are set by the Mexican government; priority industries may be eligible for discounts of up to 30 percent. The fabricated automotive glass industry has not received price discounts for these items.

F. Fund for Industrial Development (FONEI)

FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion or modernization of enterprises, in order to foster industrial decentralization and the efficient production of goods capable of competing in the international market. FONEI loans are available under various programs having different eligibility requirements. This program was not used by the companies under investigation.

G. Import Duty Reductions and Exemptions

Manufacturers in Mexico may receive import duty reductions or exemptions on equipment used for production. This program was not used by the companies under investigation.

H. Accelerated Depreciation Allowances

Certain manufacturers in Mexico may benefit from federal income tax reductions through accelerated depreciation. This program was not used by the companies under investigation.

I. Guarantee and Development Fund for Medium and Small Industries (FOGAIN)

The FOGAIN program provides preferential financing at interest rates below prevailing commercial rates to all small- and medium-sized firms in Mexico. Interest rates will vary depending upon: (a) Whether a small- or medium-sized business has a designated priority status, and (b) the geographical location of the business. This program was not used by manufacturers of the subject merchandise.

J. Government Financed Technology Development

The National Development Plan provides grants to help firms acquire technology for new plants. These grants have not been used by manufacturers of the subject merchandise.

K. Preferential State Investment Incentives

Mexican state or local government agencies may provide such benefits as tax incentives and infrastructure aid to Mexican companies. This assistance has not been used by manufacturers of the subject merchandise.

L. Mexican Institute of Foreign Trade (IMCE)

IMCE promotes Mexican foreign trade with trade fairs, missions and technical assistance to exporters. This assistance has not been used by manufacturers of the subject merchandise.

M. New Exchange Risks Trust Fund Program (FICORCA)

Petitioner alleged that producers of the subject merchandise benefitted from debt rescheduling under this program, which began on February 15, 1984, and covers foreign credits incurred after December 20, 1982. This program has not been used by manufacturers of the subject merchandise.

N. Certificado de Devolucion de Impuesto (CEDI)

Subsequent to the preliminary determination, petitioner alleged that Vitro Flex and Crinamex received countervailable benefits because CEDIs have been received by an export consortium which is related to them. These CEDIs were alleged to have been provided under a special "extra-CEDI" program available to export consortia, even though the regular CEDI program was suspended on August 25, 1982.

We found at verification that this export consortium had no dealings with Vitro Flex and Crinamex during the period of review. Therefore, we determine that CEDIs were not used by the companies under investigation.

O. Bancomext Loans

Since the initiation of this investigation we have found loans from Bancomext to provide countervailable benefits in the Final Affirmative Countervailing Duty Determination on Lime from Mexico. We are therefore including this program in this final determination. We verified that this program was not used by the companies under investigation.

P. Loans from Nacional Financiera, S.A. (NAFINSA)

Loans from NAFINSA (a government bank) have been found countervailable in past investigations but we failed to include this program among those listed on the initiation of this investigation. We nevertheless investigated NAFINSA loans and are including this program in the determination. We verified that this program was not used by the companies under investigation.

Petitioner's Comments

Comment 1: Petitioner contends that CEDIs have been received by Fomento de Comercio Exterior (FOMEXPORT), a member of the Vitro Group, resulting in a countervailable benefit to Vitro Flex and Crinamex.

DOC Response: We verified that FOMEXPORT had no dealings with Vitro Flex or Crinamex during the period of investigation. Therefore, any possible benefits received by it would not result in a bounty or grant being conferred on Vitro Flex or Crinamex.

Comment 2: Petitioner argues that the DOC's decision not to initiate an investigation of the earlier FICORCA program, involving foreign debt incurred before December 20, 1982, was a final determination. Petitioner adds, however, that if the decision is not final, the DOC should find FICORCA not to be generally available and therefore countervailable under the Act. Petitioner further adds that even if the program is generally available, the holding in *Bethlehem Steel Corporation v. United States*, 8 CIT —, 590 F. Supp. 1237 (1984) dictates that benefits provided under FICORCA should be considered countervailable.

DOC Response: We did not initiate an investigation of the FICORCA program involving rescheduling of foreign debt incurred before December 20, 1982, (the "earlier" FICORCA program) because we had found it to be a generally available domestic program in *Unprocessed Float Glass from Mexico: Countervailing Duty Determination*, 49 FR 23097, 23099 (June 4, 1984). Absent new evidence or changed circumstances, we do not reinvestigate programs found not to be countervailable in earlier investigations. The information that petitioner presented does not indicate that the earlier FICORCA program is not generally to all Mexican companies with foreign indebtedness, but merely indicates that relatively few Mexican companies have incurred foreign debt and are thus eligible for the program. Petitioner has provided no evidence of government selection of participants,

which is a criterion for countervailing programs that otherwise appear to be generally available. As for petitioner's contention that the Court of International Trade held in *Bethlehem* that generally available benefits are countervailable, we disagree. The CIT's comments on general availability in that case are *dicta* and do not affect the court's holding in *Carlisle Tire and Rubber Co. v. United States*, 564 F. Supp. 834 (1983), which approves our general availability test.

Comment 3: Petitioner contends that the respondents have failed to provide certain information requested in the DOC's questionnaire and that the DOC should use the best information otherwise available for purpose of making a final determination.

DOC Response: Respondents have submitted all necessary information in time to be considered in this final determination and have been cooperative with this investigation. All information submitted has been verified. Therefore, we are using the verified information from the responses as the basis for our final determination, as required by section 776 of the Tariff Act of 1930, as amended, 19 U.S.C. 1677e.

Comment 4: Petitioner contends that Vitro Flex and Crinamex receive countervailable benefits through the provision of funds from parent company Vitro, S.A. to cover operating losses. They provided evidence which they claim indicates that Vitro Flex and Crinamex are selling in the United States at less their cost of production. Petitioner further argues that Vitro Flex and Crinamex receive loans from Vitro S.A. that conferred countervailable benefits on Vitro Flex and Crinamex.

DOC Response: The provision of loans or other funds between related companies, absent evidence of government direction, is presumptively governed by commercial considerations and thus is not countervailable.

Comment 5: Petitioner argues that, in determining whether subsidized inputs confer a benefit on fabricated automotive glass producers, the DOC should compare the prices charged respondents by their Mexican float glass suppliers with the suppliers' price to unrelated customers. This comparison, they argue, would show whether the float glass companies sell more cheaply to their related customers and in so doing, could be passing on subsidies.

DOC Response: We disagree. The correct comparison for determining whether a benefit is conferred on the automotive float glass producers is between prices charged those producers by different suppliers of the input in

question. If at least one of those suppliers has not been found to be subsidized and the price that supplier is charging for the input is on arm's-length price, then that price is the benchmark for determining whether benefits are passed on to producers of the product under investigation through their purchase of allegedly subsidized, domestically-sourced inputs.

In this case, we found a U.S. company, although related to Vitro Flex and Crinamex, supplied float glass to them at an arm's-length price and that the Mexican suppliers of float glass supplied it above the arms-length price. Since no competitive benefit was conferred on automotive glass companies through their purchases of domestically-produced float glass, the pricing policies of the related float glass producers are of no relevance in this investigation.

Respondents' Comments

Comment 1: Respondents argue that this proceeding should be terminated because PPG does not represent a majority of the domestic industry. Four domestic producers, whose combined output accounts for more than half of total U.S. production, have indicated that they do not support the petition. It is inappropriate, respondents add, to exclude from our definition of the domestic industry Ford and Libbey-Owens-Ford because:

- The share of imports in these companies' total production of the subject product is very small; and
- These two companies account for a major proportion of U.S. production of the subject product.

DOC Response: For the Department to initiate an investigation, the petitioner must file "on behalf of an industry." 19 U.S.C. 1671a(b). We determine that the petitioner has filed on behalf of the U.S. fabricated automotive glass industry. Six of the ten domestic producers support the petition.

Alternatively, to determine industry support in terms of total volume of production, we have exercised our discretion in accordance with section 771(4)(B) of the Act, to exclude from consideration of the industry three domestic producers. Section 771(4)(B) specifies that, under the appropriate circumstances, we may exclude domestic producers that are importers, related to importers, or related to exporters of the product under investigation. 19 U.S.C. 1671(4)(B). The two, Ford and Libbey-Owens-Ford are importers of fabricated automotive glass from Mexico and are each related to different exporters of the subject product. These companies oppose the petition. Circumstances are appropriate

in this case for excluding them because they are the major importers of the subject merchandise and each has a substantial ownership interest in a Mexican exporter. As importers, they would be liable for countervailing duties and they would lose any competitive advantage they receive from importing allegedly subsidized merchandise. As parties related to exporters, they have an interest in preventing the issuance of a countervailing duty order on the subject merchandise. Having excluded these companies, we find that producers accounting for more than 60 percent of the total U.S. production of fabricated automotive glass support the petition. Although Ford's and Libbey-Owens-Ford's imports are a small percentage of their total production, each imports a significant proportion of Mexican exports for fabricated automotive glass to the U.S.

Comment 2: Vitro Flex and Crinamex argue that IMCE trade promotion assistance should be found not to be countervailing in order to be consistent with the DOC's final determination in *Cut Flowers from Mexico*.

DOC Response: Information has not been provided to the Department, either in the *Cut Flowers* investigation or in this investigation, to establish that all IMCE trade promotion programs are non-countervailing in all cases. Only market research studies by IMCE were found not to confer a benefit in *Cut Flowers*. Therefore, the DOC must continue to consider this program in its investigations involving Mexico.

Comment 3: Vitro Flex and Crinamex argue that in arriving at the final determination in this case, the DOC should consistently utilize a given period of time for measuring both CEPROFI and FOMEX benefits received by the Mexican auto glass industry. They further state that the DOC should take into account the fact that effective April 1, 1984, the Government of Mexico increased the interest rates for FOMEX export financing to 7.1 percent, and 19.3 percent for FOMEX pre-export financing.

DOC Response: Our policy is to take into account program-wide changes made before the preliminary determination when we have sufficient data to calculate the updated rate. In this case we had sufficient verified information to use the newer FOMEX interest rates for FOMEX export loans, but not for FOMEX pre-export loans. Thus, we used April-June, 1984, as our review period for FOMEX export loans and 1983 as our review period for FOMEX pre-export loans.

Comment 4: Counsel for Vitro Flex and Crinamex argue that the DOC

should exclude from coverage in its final determination Ford original equipment automotive glass, for which they claim PPG does not produce a "like product." They state that PPG does not have a "legitimate, cognizable interest" in such merchandise.

DOC Response: We consider the Ford original equipment automotive glass to be a "like product" to that produced by PPG. Ford's current business decision to use different channels of trade than other U.S. buyers does not dictate a difference concerning PPG's "cognizable interest" in such merchandise.

Comment 5: Counsel for Vitro Flex and Crinamex states that there were no additional charges or expenses, prepaid interest or compensating balances on all non-FOMEX short-term loans to these companies. Therefore, they argue, the DOC should use a nominal benchmark rate in its loan calculations, unless it uses an "accurate" company or industry-specific benchmark.

DOC Response: As explained in the Subsidies Appendix, it is standard Departmental practice to use a country-wide benchmark for short-term loan calculations. In our preliminary determination, we compared a nominal interest rate to a commercially available nominal interest rate. During verification it was determined that, for FOMEX pre-export loans, the nominal interest rate was the effective interest rate. We also found that interest is paid in advance for FOMEX export loans. Therefore, for our final determination, we compared the effective interest rate of FOMEX pre-export and export financing to a commercially available effective interest rate. It is irrelevant to our choice of benchmark in calculating FOMEX loan benefits that there are no charges, compensating balances or prepaid interest on respondents' non-FOMEX loans.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification we followed normal procedures, including meetings and inspection of documents with government officials and on-site inspection of the records and operations of the companies exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Written views have been

received and considered in reaching this final determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect, except with respect to fabricated automotive glass manufactured and exported by L-N Safety Glass. The net bounty or grant for duty deposit purposes is 4.68 percent *ad valorem* for all manufacturers and exporters except L-N Safety Glass.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from Mexico which is entered, or withdrawn from warehouse, for consumption, or after the date of publication of this notice in the *Federal Register* and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 706 of the Act (19 U.S.C. 1671e).

Alan F. Holmer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85-1012 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-D5-M

IA-433-4011

Certain Carbon Steel Products From Austria; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Austria are being, or are likely to be, sold in the United States at less than fair value. Sales at below the cost of production and critical circumstances also have been alleged. We are notifying the United States International Trade Commission (ITC) of the action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and we will make ours on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, 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) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 19, 1984, we received a petition in proper form filed by United States Steel Corporation. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Austria 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based the United States prices on average export prices compiled by the U.S. Department of Commerce. The petition alleges that there are insufficient home market or third country sales of the subject merchandise at prices above the cost of production to determine fair value. Therefore, the petitioner based foreign market value on publicly available information on the costs of production, for Voest-Alpine AG.

Based on the comparison of values calculated by the foregoing methods, the petitioner arrived at dumping margins ranging from 41.6 percent to 61 percent.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel products and have found that it meets the requirements of section 732(b) of the act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigations to determine whether certain carbon steel products from Austria are being, or are likely to be, sold in the United States at less than fair value. We will also investigate the allegation of sales below cost of production. If our investigation proceeds normally, we will make our preliminary determination by May 28, 1985.

Scope of Investigation

The products under investigation are hot-rolled sheet, cold-rolled sheet, and galvanized sheet. The term "*hot-rolled sheet*" covers hot-rolled carbon steel products, whether or not corrugated, crimped, not cold-rolled, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal, and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *Tariff Schedules of the United States, Annotated* (TSUSA), or 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342.

The term "*cold-rolled sheet*" covers cold-rolled carbon steel products, whether or not corrugated, crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*, or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils, as currently provided for in items 607.8350, 607.8355, 607.8360 of the *TSUSA*.

The term "*Galvanized sheet*" covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1330, of the *TSUSA*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of certain carbon

steel products from Austria are causing material injury, or threaten material injury, to a United States industry. If its determinations are negative the investigations will terminate; otherwise, they will proceed according to the statutory procedures.

January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 85-1025 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-435-401]

Certain Carbon Steel Products From Czechoslovakia; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Czechoslovakia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of these actions so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and the Department of Commerce will make its preliminary determinations on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Karen L. Sackett, 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) 377-3798.

SUPPLEMENTARY INFORMATION

The Petition

On December 19, 1984, we received a petition in proper form filed by the United States Steel Corporation, filing on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Czechoslovakia 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner bases the United States price on the average unit value of certain carbon steel products imported from Czechoslovakia, as reported by the U.S. Department of Commerce, Bureau of the Census.

Petitioner claims that under section 773(c) of the Act, Czechoslovakia qualifies as a state-controlled economy, and that a surrogate country's prices should be used as the basis for determining the foreign market value of the merchandise under investigation. Petitioner chose Austria as a surrogate country, and bases foreign market value on constructed value of carbon steel plate and cold-rolled and hot-rolled carbon steel flat-rolled products, because they allege the Austrian firm is selling below cost of production.

Based on the comparison of prices calculated using the foregoing methodology, the petitioner alleges an average dumping margin of 85.8 percent for carbon steel plate and 84.9 percent for cold-rolled carbon steel flat-rolled products.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of antidumping duty investigations and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition of certain carbon steel products and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Czechoslovakia are being, or are likely to be, sold in the United States at less than fair value.

Petitioner alleges that we also should initiate an investigation on plate in coil (TSUSA Item 607.6610), although there have been no imports since 1979, since the Czechoslovakian producers might divert production to that product once exports are subject to antidumping duties. In case of diversion to a different product, more than the speculative potential of future sales for export is necessary to meet the "likely to be sold" criterion of section 731 of the Act. At the very least there must be evidence of an irrevocable offer. No such evidence has

been presented here. Therefore, we are not initiating with respect to this product. Of course, should the U.S. industry or the Department subsequently discover actual or likely sales of Czechoslovakian plate in coil for export to the U.S., an antidumping investigation could then be initiated.

In the course of our investigations, we will determine whether the economy of Czechoslovakia is state-controlled to an extent that sales of such or similar merchandise in the home market or third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a surrogate country for purposes of determining foreign market value. If our investigations proceed normally we will make our preliminary determinations by May 28, 1985.

Scope of Investigations

The products covered by these investigations are certain carbon steel products, including carbon steel plate and cold-rolled carbon steel flat-rolled products.

The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled and not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term "cold-rolled carbon steel flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the TSUSA; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils, as currently provided for in items 607.8350, 607.8355, or 607.8360 of the TSUSA.

Notification of the ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used

to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also 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 consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of certain carbon steel products from Czechoslovakia are causing material injury, or threaten material injury, to a United States industry. If the ITC determinations are negative the investigations will terminate; otherwise, they will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary, for Import Administration.

January 8, 1985.

[FR Doc. 85-1024 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-404]

Certain Carbon Steel Products From the German Democratic Republic; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from the German Democratic Republic (GDR) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury to, a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and we will make ours on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, 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) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On December 19, 1984, we received a petition in proper form filed by United States Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the GDR 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to, a United States industry.

The petitioner based the United States prices on average GDR export prices, as derived from U.S. Bureau of Census statistics.

The petitioner alleged that the GDR is a non-market economy and chose Austria as the appropriate surrogate country for the purpose of determining foreign market value. Using information contained in an Austrian steel producer's annual reports, the petitioner estimated that firm's costs of production. On the basis of these estimates, the petitioner further alleged that Austria's home market prices are below the cost of production and that foreign market value should be based on the constructed value of the merchandise, in accordance with section 773(e) of the Act.

By comparing the values calculated by the foregoing methods the petitioner alleged dumping margins of 104.1 percent for carbon steel plate, 85.0 percent for cold-rolled sheet, and 75.3 percent for galvanized sheet.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel products and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain carbon steel products from the GDR are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed

normally we will make our preliminary determinations by May 28, 1985.

In the course of our investigations, we will determine whether the economy of the GDR is state-controlled to an extent that sales of such or similar merchandise in the home or third country market does not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a surrogate country for purposes of determining foreign market value.

Scope of Investigations

The products under investigation are carbon steel plate, hot-rolled carbon steel flat-rolled products, cold-rolled carbon steel flat-rolled products, and galvanized carbon steel sheet.

The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad. 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625 of the *TSUSA*. Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel flat-rolled products, whether or not corrugated, or crimped, not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad. 0.1875 inch or more in thickness and over 8 inches in width, pickled, and as currently provided for in item 607.8320 of the *TSUSA*, and in coils; as currently provided in item 607.6610 of the *TSUSA*.

The term "cold-rolled carbon steel, flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped, whether or not painted or varnished and whether or not pickled; not cut, or not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad, over 12 inches in width, and 0.1875 or more in thickness; as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

The term "galvanized carbon steel sheet" covers hot- or cold-rolled carbon steel sheet which have been coated or plated with zinc including any material

which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1320, or 608.1330, of the *TSUSA*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of certain carbon steel products from the GDR are causing material injury, or threaten material injury to, a United States industry. If its determination is negative these investigations will terminate; otherwise, they will proceed according to the statutory procedures.

Dated: January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Dec. 85-1029 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-06-M

[A-437-401]

Certain Carbon Steel Products From Hungary; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Hungary are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of these actions so that it may determine whether imports of these products are causing material injury, or

threaten material injury, to a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and the Department of Commerce will make its preliminary determinations on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, 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) 377-3798.

SUPPLEMENTARY INFORMATION:

The Petition

On December 19, 1984, we received a petition in proper form filed by the United States Steel Corporation, filing on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Hungary 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner bases the United States price on the average unit value of certain carbon steel products imported from Hungary, as reported by the U.S. Department of Commerce, Bureau of the Census.

Petitioner claims that under section 773(c) of the Act, Hungary qualifies as a state-controlled economy, and that a surrogate country's prices should be used as the basis for determining the foreign market value of the merchandise under investigation. Petitioner chose Spain as the surrogate country, and bases foreign market value on constructed value of certain carbon steel products, because they allege the Spanish firms are selling below cost of production.

Based on the comparison of prices calculated using the foregoing methodology, the petitioner alleged an average dumping margin of 52.0 percent for carbon steel plate and 49.5 percent for hot-rolled carbon steel flat-rolled products.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the

allegations necessary for the initiation of antidumping duty investigations and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel products and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section of the Act, we are initiating antidumping duty investigations to determine whether certain carbon steel product from Hungary are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally we will make our preliminary determinations by May 28, 1985.

In the course of our investigations, we will determine whether the economy of Hungary is state-controlled to an extent that sales of such or similar merchandise in the home or third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a surrogate country for purpose of determining foreign market value.

Scope of Investigations.

The products covered by these investigations are certain carbon steel products, including carbon steel plate and hot-rolled carbon steel flat-rolled products.

The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled and not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, and 607.6625 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel products, whether or not corrugated or crimped, not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width and in coils, as currently provided for in item 607.6610 of the *TSUSA*; or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in

items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

Notification of the ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also 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 consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by the ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports or certain carbon steel products from Hungary are causing material injury, or threaten material injury, to a United States industry. If the ITC determinations are negative the investigations will terminate; otherwise, they will proceed according to the statutory procedures.

January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 85-1023 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-06-M

[A-455-402]

Certain Carbon Steel Products From Poland; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Poland are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury to, a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and we will make ours on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, 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) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On December 19, 1984, we received a petition in proper form filed by United States Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Poland 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to, a United States industry.

The petitioner based the United States prices on average f.a.s. port of exit prices, as derived from U.S. Bureau of Census statistics.

The petitioner alleged that Poland is a non-market economy and chose Spain as the appropriate surrogate country for the purpose of determining foreign market value. Using information contained in Spanish steel producers' annual reports, the petitioner estimated those firms' costs of production. On the basis of these estimates, the petitioner further alleged that Spain's home market prices are below the cost of production and that foreign market value should be based on the constructed value of the merchandise, in accordance with section 773(e) of the Act.

By comparing the values calculated by the foregoing methods the petitioner alleged a dumping margin of 61.7 percent.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel products and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Poland are being, or are likely to be,

sold in the United States at less than fair value. If our investigators proceed normally we will make our preliminary determinations by May 28, 1985.

Petitioner alleges that we also should initiate an investigation on plate in coil (*TSUSA* item 607.6610), although there have been no imports since 1979, since the Polish producers might divert production to that product once exports are subject to antidumping duties. In the case of diversion to a different product, more than the speculative potential of future sales for export is necessary to meet the "likely to be sold" criterion of section 731 of the Act. At the very least there must be evidence of an inescapable offer. No such evidence has been presented here. Therefore, we are not initiating with respect to this product. Of course, should the U.S. industry or the Department subsequently discover actual or likely sales of Polish plate in coil for export to the U.S., an antidumping investigation could then be initiated.

In the course of our investigation, we will determine whether the economy of Poland is state-controlled to an extent that sales of such or similar merchandise in the home or third country market does not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a surrogate country for purposes of determining foreign market value.

Scope of Investigations

The products under investigation are carbon steel plate and hot-rolled carbon steel flat-rolled products.

The term "*carbon steel plate*" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625 of the *TSUSA*. Semifinished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information

in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of certain carbon steel products from Poland are causing material injury, or threaten material injury to, a United States industry. If its determination is negative these investigations will terminate; otherwise, they will proceed according to the statutory procedures.

January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 85-1026 Filed 11-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-484-401]

Certain Carbon Steel Products From Romania; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Romania are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of these actions so that it may determine whether imports of these products are causing material injury, or threaten material injury to, a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and we will make ours on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, 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) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On December 19, 1984, we received a petition in proper form filed by United States Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Romania 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to, a United States industry.

The petitioner based the United States prices on average f.a.s. port of exit prices, as derived from U.S. Bureau of Census statistics.

The petitioner alleged that Romania is a non-market economy and chose Spain as the appropriate surrogate country for the purpose of determining foreign market value. Using information contained in Spanish steel producers' annual reports, the petitioner estimated those firms' costs of production. On the basis of these estimates, the petitioner further alleged that Spain's home market prices are below the cost of production and that foreign market value should be based on the constructed value of the merchandise, in accordance with section 773(e) of the Act.

By comparing the values calculated by the foregoing methods the petitioner alleged dumping margins of 53.7 percent for hot-rolled sheet, 76.6 percent for cold-rolled sheet, and 48.9 percent for galvanized sheet.

INITIATION OF INVESTIGATIONS

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel products and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Romania are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally we will make our preliminary determinations by May 28, 1985.

In a past antidumping duty investigation of hot-rolled carbon steel plate, we found Romania to be a state-controlled economy country (47 FR

35666). During the course of our investigation we will attempt to choose a surrogate country for the purpose of determining foreign market value, as use of a surrogate is the preferred method of determining foreign market value under Commerce regulations, 19 CFR 353.8.

SCOPE OF INVESTIGATIONS

The products under investigation are hot-rolled carbon steel flat-rolled products, cold-rolled carbon steel flat-rolled products, and galvanized carbon steel sheet.

The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled; as currently provided for in item 607.8320, of the *TSUSA*, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.40, or 607.8342 of the *TSUSA*.

The term "cold-rolled carbon steel flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shapes; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

The term "galvanized carbon steel sheet" covers hot- or cold-rolled carbon steel sheet which have been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1310, 608.1320, or 608.1330, of the *TSUSA*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all

privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of certain carbon steel products from Romania are causing material injury, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-1027 Filed 1-11-85; 8:45 am]

BILLING CODE 9510-DS-M

[A-307-402]

Certain Carbon Steel Products From Venezuela; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Venezuela are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and we will make ours on or before May 28, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Kenneth G. Shimabukuro, 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) 377-5332.

SUPPLEMENTARY INFORMATION: The Petition

On December 19, 1984, we received a petition in proper form filed by the United States Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Venezuela 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

United States Price and Foreign Market Value

The petitioner based United States prices on average values, f.a.s. port of exit, derived from the Bureau of Census statistics. A lag time of sixty days (for shipping and delays in statistical reporting) was calculated from the date of shipment to the date of importation. Except for this adjustment the comparisons were made on a quarterly basis (respectively).

For plate, hot-rolled sheet, and cold-rolled sheet, the petitioner based foreign market value on Venezuelan producer Sidor's (96% to 100% of domestic production) annual report. Weighted average values were calculated from quarterly values calculated for the period July 1983 through September 1984. For galvanized sheet the petitioner based foreign market value on a price list issued by Lamigal, the only known Venezuelan producer of galvanized sheet. The weighted average value was calculated from quarterly values calculated for the period October 1983 through September 1984.

Sidor's annual report is for the fiscal year ending December 31, 1983. A thirty percent price increase was approved by the government of Venezuela in August 1984. The petitioner assumed that the prices for the fourth quarter in 1983 remained in effect through the second quarter of 1984. Petitioner increased these prices by thirty percent to calculate the prices for the third quarter of 1984.

Lamigal's price list was effective March 15, 1984. Petitioner assumed that Lamigal was granted a thirty percent price increase in March 1984 since other steel companies were granted price increases in August 1984. For the last quarter in 1983, and the first quarter in 1984, therefore, the petitioner reduced the price list prices by thirty percent.

Based on the comparison of values calculated by the foregoing methods the

petitioner alleged weighted average dumping margins, as follows:

	Percent
Plate	209.8
Hot-rolled sheet	106.2
Cold-rolled sheet	194.3
Galvanized sheet	164.5

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain carbon steel products from Venezuela and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain carbon steel products from Venezuela are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally we will make our preliminary determinations by May 28, 1985.

Scope of Investigation

The products under investigation are: (1) Carbon steel plate, (2) hot-rolled carbon steel flat-rolled products, (3) cold-rolled carbon steel flat-rolled products and, (4) galvanized carbon steel sheet.

1. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625 of the TSUSA. Semifinished products of solid rectangular cross-section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

2. The term "hot-rolled carbon steel flat-rolled products" covers hot-rolled carbon steel products, whether or not corrugated, crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled and as currently provided for in item 607.8320 of the TSUSA; and not pickled and in coils; as currently provided in item 607.6610 or under 0.1875 inch in thickness and over

12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

3. The term "cold-rolled carbon steel flat-rolled products" covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 or more in thickness; as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

4. The term "galvanized carbon steel sheet" covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0730, 608.1320, or 608.1330, of the *TSUSA*. Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of certain carbon steel products from Venezuela are causing material injury, or threaten material injury, to a United States industry. If its determinations are negative the investigations will terminate; otherwise, they will proceed according to the statutory procedures.

Dated: January 8, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-1028 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-407]

Hot-Rolled Carbon Steel Sheet and Cold-Rolled Carbon Steel Sheet From Finland; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether hot-rolled carbon steel sheet (hot-rolled sheet) and cold-rolled carbon steel sheet (cold-rolled sheet) from Finland are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States Industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before February 4, 1985, and we will make ours on or before May 29, 1985.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Stanhagen, 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) 377-1777.

SUPPLEMENTARY INFORMATION:

The Petition

On December 20, 1984, we received a petition in proper form filed by Bethlehem Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Finland 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 Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. The petition also contained an allegation that sales in the home market were made at prices below the cost of producing the merchandise, pursuant to section 773(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1677b(b)).

United States Price and Foreign Market Value

The petitioner based the United States prices on data obtained from the U.S.

Customs Service on the unit values of imports on an f.a.s. basis.

The petitioner based foreign market value on the base prices of these products contained in published price lists of Rautaruukki Oy for the home market and petitioner's estimate of the average overall charge for extras using the charges specified in the price lists. The petitioner also alleged that sales in the home market were made at prices below the cost of producing the merchandise. Petitioner presents cost figures derived from the 1983 Annual Report of Rautaruukki Oy, which indicate that some of the home market prices calculated by petitioner are below cost. However, petitioner did not conduct a complete comparison of home market prices to production costs or present information regarding prices for sales to third countries. Therefore, we have accepted the home market prices calculated by petitioner as the basis for foreign market value. We intend to gather additional information on Rautaruukki Oy's cost of production during the course of this investigation.

Based on the comparison of values calculated by the foregoing methods, the petitioner arrived at dumping margins equal to 13.73 percent for hot-rolled sheet and 4.77 percent for cold-rolled sheet on a weighted average basis.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on hot-rolled sheet and cold-rolled sheet from Finland and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether hot-rolled sheet and cold-rolled sheet from Finland are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally we will make our preliminary determinations by May 29, 1985.

Scope of Investigations

The products under investigation are hot-rolled carbon steel sheet and cold-rolled carbon steel sheet from Finland.

The term "cold-rolled carbon steel sheet" covers cold-rolled carbon steel products, whether or not corrugated or crimped; not painted or varnished; whether or not pickled; not cut, pressed,

and not stamped to non-rectangular shapes; not coated or plated with metal; over 12 inches in width and under 0.1875 inch in thickness; other than annealed and having a minimum yield point of 40,000 psi; whether or not in coils; as currently provided for in item 607.8360 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

The term "hot-rolled carbon steel sheet" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled and not cold rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; in coils; as currently provided for in item 606.6710 of the *TSUSA*, or under 0.1875 inch in thickness and over 12 inches in width, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, and 607.6740 of the *TSUSA*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by February 4, 1985, whether there is a reasonable indication that imports of hot-rolled carbon steel sheet and cold-rolled carbon steel sheet from Finland are causing material injury, or threaten material injury, to a United States industry. If its determinations are negative the investigations will terminate; otherwise, they will proceed according to the statutory procedures.

Dated: January 8, 1985.

Alan F. Homer,
Deputy Assistant Secretary for Import
Administration.

[FR Doc. 85-1030 Filed 1-11-85; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Availability of Program Solicitation for Support of Advanced Coal Research of U.S. Colleges and Universities

AGENCY: Department of Energy,
Pittsburgh Energy Technology Center.

ACTION: Availability of Program
Solicitation for Support of Advanced
Coal Research at U.S. Colleges and
Universities.

SUMMARY: Now available Program
Solicitation (PS) DE-PS22-85PC80501
which solicits grant applications from
U.S. colleges, universities, and
university-affiliated research centers for
research and advance concepts related
to coal science.

This activity is a part of the
Department of Energy's coal research
efforts; moreover, the purpose of this
overall effort is to improve fundamental
scientific and technical understanding of
the chemical and physical processes
involved in the conversion and
utilization of coal.

In order to develop a focused national
and regional program of university
research on coal science, the
Department is particularly interested in
innovative, fundamental research
pertinent to coal conversion and
utilization limited to the following
topics:

(a) *Coal Science:* Structure and
reactivity of coal; physical and chemical
characteristics of coal and coal-derived
materials; analytical research applicable
to coal and coal-derived materials;
organic and inorganic chemistry of coal
pertinent to direct or indirect conversion
and utilization; electrochemical
investigation of conversion and
utilization reactions.

(b) *Surface Science:* Surface
properties of coal pertinent to
conversion and utilization, e.g.,
stabilization of coal-water/coal-oil
slurries, coal preparation; surface
properties of catalysts useful in direct or
indirect conversion and utilization of
coal.

(c) *Mechanisms and Kinetics:*
Mechanism and kinetics of direct and
indirect coal conversion and utilization
reactions.

(d) *Thermodynamics:* Thermodynamic
and transport properties pertinent to
coal conversion and utilization;
supercritical phase behavior; phase
transformation of coal mineral matter
occurring during conversion and
utilization.

(e) *Solids Transport:* Mechanism and

modelling of bulk and multiphase
transport of solids in coal conversion
and utilization.

(f) *Environmental Science:* Chemistry
of formation and/or elimination of
gaseous and liquid pollutants arising
from coal conversion and utilization
reactions.

Authority: DOE Organization Act, Pub. L.
95-91 (42 U.S.C. 7101) Federal Non-nuclear
Energy Research and Development Act of
1974, Pub. L. 93-577 (42 U.S.C. 5901 *et seq.*)
DOE Financial Assistance Regulations, 10
CFR Part 600 Subparts A and C.

Awards: DOE anticipates awarding
grants for each project subject to the
availability of funds. Approximately
\$3.35 million is available for the program
solicitation, which should provide
support for about 20-25 proposals.

FOR FURTHER INFORMATION CONTACT:
U.S. Department of Energy, Pittsburgh
Energy Technology Center, Acquisition
and Assistance Division, P.O. Box 16940,
MS 900-L, Pittsburgh, PA 15236, Attn:
Keith R. Miles.

Issued in Washington, DC, on January 7,
1985.

Sun W. Chun,

Director.

[FR Doc. 85-1018 Filed 1-11-85; 8:45 am]

BILLING CODE 4850-01-M

Economic Regulatory Administration

Entitlements Exception Orders

AGENCY: Economic Regulatory
Administration, Department of Energy.
ACTION: Final decision.

SUMMARY: The Economic Regulatory
Administration (ERA) of the Department
of Energy (DOE) is announcing the final
decision concerning the Department's
policy on Entitlements exception orders.
If the Office of Hearings and Appeals
(OHA) determines that refiners as a
class were injured by overcharge
activity, OHA will fund receive orders
from that portion of refund money which
corresponds to the injury sustained by
refiners as a class. Dispense orders will
not be effectuated.

FOR FURTHER INFORMATION CONTACT:
Milton C. Lorenz, Special Counsel,
Economic Regulatory Administration,
U.S. Department of Energy, Room 5B-
168, 4000 Independence Avenue, SW.,
Washington, D.C. 20585, (202) 252-
8900

Ben McRae, Office of General Counsel,
U.S. Department of Energy, 1000
Independence Avenue, SW., Room
6E-042, Washington, D.C. 20585, (202)
252-6667.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Decision

- A. Receive Orders
- B. Dispense Orders
- C. Pending and Future Applications

III. Discussion of Comments

IV. Procedural Matters

I. Introduction

The decision announced today establishes DOE's policy concerning the treatment of Entitlements exception orders. ERA¹ developed this policy in view of the statutory requirements for exception relief, the nature of Entitlements exception orders, Executive Order (E.O.) 12287 which decontrolled crude oil and petroleum products, and the decision not to publish any further Entitlements lists. In order to understand this policy, it is necessary to examine these factors briefly.

From the beginning of price and allocation regulation of crude oil and petroleum products, a firm could seek and receive exception relief from the operation of those regulations.² The regulations were based on macro-economic factors, designed to operate on an industry-wide basis, and could impose special hardship, inequity, or unfair burdens on an individual firm. Exception relief was intended to mitigate adverse effects of the regulations suffered by individual firms.

Congress continued the availability of exception relief when DOE was created. Section 504(a) of the Department of Energy Organization Act (DOE Act), Pub. L. No. 95-91, provides:

The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order . . . issued under . . . the Emergency Petroleum Allocation Act of 1973 . . . consistent with the other purposes of . . . the Act, as may be necessary to prevent special hardship, inequity or unfair distribution of burdens . . . The Secretary . . . shall additionally insure that each [exceptional] decision shall specify the standard of hardship, inequity, or unfair distribution of burden by which any

¹ In this Decision, the ERA Administrator sets forth the Department's policy regarding Entitlements exception orders. The ERA Administrator has authority to take this action under existing delegations of authority. However, to remove any possible doubt regarding his authority, the Secretary of Energy delegated to the ERA Administrator the authority to establish the Department's policy concerning the treatment of Entitlements exception orders in Delegation Order No. 0204-114. Delegation Order No. 0204-114 does not affect the authority delegated to OHA pursuant to Delegation Order No. 0204-24, except to the extent that Delegation Order No. 0204-24 provides that OHA shall be governed by Department policy in exercising that authority.

² Section 503 of the Economic Stabilization Act of 1970, Pub. L. No. 91-379, as amended by Pub. L. No. 92-210 and Pub. L. No. 93-28; Section 7(b) of the Federal Energy Administration Act of 1974, Pub. L. No. 93-275, as amended by Pub. L. No. 95-91.

disposition was made, and the specific application of such standards to the facts contained in [an] application.

Thus, the Secretary, or his delegate, must (1) provide for exception relief from the regulations under the Emergency Petroleum Allocation Act of 1973 (EPAA), Pub. L. 93-159, 15 U.S.C. 751 *et seq.*, where operation of those regulations would give rise to "special hardship, inequity or unfair distribution of burdens" ["hardship"], (2) insure that relief is consistent with the other purposes of the EPAA, (3) specify the standard of hardship, and (4) apply the standard to the facts of each application for relief.

In many instances exception relief was effectuated by means of Entitlements exception orders. In general, Entitlements exception orders reduced a firm's obligation to buy Entitlements or permitted it to sell Entitlements to the extent necessary to offset the hardship caused by the regulations. If a later review revealed a firm had received more than the minimum relief necessary to offset the hardship, an Entitlements exception order could require it to buy Entitlements.

Using the Entitlements Program to effectuate Entitlements exception relief had certain regulatory advantages. The Entitlements Program provided a method for spreading the costs of exception relief throughout the industry on a proportionate basis. In addition, since Entitlements transactions were included in the calculation of all refiners' crude costs and the costs of refined petroleum products, Entitlements exception relief to refiners was reflected in the downstream market. In this way the operation of the whole regulatory program spread the burden of Entitlements exception orders on the entire economy. Thus, while it was in effect the price and allocation control system provided some safeguard against individual refiners receiving unintended windfalls or bearing disproportionate financial burdens as a result of Entitlements exception orders.

On January 28, 1981, the President exercised his authority under the EPAA and issued E.O. 12287 in which he ordered, effective immediately, the elimination of federal regulation of crude oil and petroleum products. Essentially, the President determined that the most expeditious way to achieve the purposes of the EPAA was to return immediately and in an orderly fashion to a decontrolled market.

At the time of decontrol, a number of Entitlements exception orders were outstanding. After decontrol, OHA

continued to grant conditional Entitlements exception orders. These orders granted relief from regulatory requirements relating to periods prior to decontrol in the event that DOE exercised its discretion under E.O. 12287 to make available an appropriate implementing mechanism. DOE stated it would not terminate consideration of the merits of exception claims *sub judice* before the agency exercised its discretion whether and how to implement outstanding Entitlements exception orders. 46 FR 30096 (July 13, 1981). In addition, the Federal Energy Regulatory Commission (FERC) and the courts continued to affirm or modify Entitlements exception orders. All of these orders were originally adjudicated pursuant to standards premised on the existence of a regulatory environment, and particularly the Entitlements Program.

On June 28, 1984, ERA issued its final decision not to publish any further Entitlements lists. 49 FR 27410 (July 3, 1984, "July Notice"). In making this decision, ERA recognized that DOE's policy concerning Entitlements exception orders had to be reviewed. At the very least, consideration had to be given to the fact that there would be no further Entitlements lists. In addition, consideration had to be given to the impact of effectuating Entitlements exception orders in light of the dramatic changes caused by E.O. 12287.

According to the July Notice, giving effect to all Entitlements exception orders would have the same or substantially similar adverse impacts as publishing further Entitlements lists. Effectuation would strengthen recipient firms while detrimentally impacting dispensing firms without regard to present market conditions and without a functioning regulatory regime to spread the benefits and burdens of such orders. On the other hand, it was suggested that receive orders³ deserved special consideration since they had resulted from individual adjudicatory proceedings which had determined that the EPAA regulations actually imposed special hardship on particular firms in particular factual circumstances.

The July Notice set forth a tentative decision concerning the treatment of Entitlements exception orders. Pursuant to this tentative decision DOE would balance equitable claims for receive orders against the harmful effects of further interventions in the marketplace. Effect would be given to receive orders if a means were available to fund such

³ That is, orders which would have permitted firms to receive money by selling Entitlements.

orders without unduly disrupting the market. Effect would not be given to dispense orders.⁴ The July Notice requested comments on the tentative decision and listed six questions. On August 13, 1984, ERA extended the period for comments and asked two additional questions. 49 FR 32446 [August 14, 1984, "August Notice"].

II. Decision

This Notice announces DOE's policy decision concerning Entitlements exception orders. These orders originally were premised on, and were to be implemented through, the continued operation of the Entitlements Program. In light of the decision not to publish any further Entitlement lists, the form and means of implementing these orders must be reconsidered. DOE has decided the following actions would be fair to firms with adjudicated receive and dispense orders and also be in keeping with the transition from a regulated to deregulated market and with the objectives of the EPAA. With respect to receive orders, if OHA determines refiners as a class were injured by violations or alleged violations of the EPAA regulations, then OHA should fund receive orders from that portion of refund money⁵ which corresponds to the injury sustained by refiners as a class. With respect to dispense orders, no further action will be taken to effectuate these orders. The reasons for these decisions are set forth below.

A. Receive Orders

OHA currently is conducting a number of procedures which relate to the policy announced in this Notice. These proceedings involve the distribution of crude oil refund money in over 250 individual cases. To a large extent, these cases have been consolidated in the following four proceedings: *In the Matters of Alfred B. Alkek, et al.*, 9 DOE ¶82,521 (1982); *In the Matters of Adam Resources and Energy, Inc. et al.*, 9 DOE ¶82,553 (1982); *In the Matter of Standard Oil Company (Indiana)*, 10 DOE ¶85,048 (1982); *In the Matter of A. Johnson & Co., Inc. et al.*, 12 DOE ¶85,102 (1984).⁶

⁴ That is, orders which would have required firms to dispense money by buying Entitlements.

⁵ That is, sums collected through settlements or orders pursuant to the enforcement of regulations under the EPAA.

⁶ In addition, it is likely OHA ultimately will determine the distribution of other crude oil refund money. ERA currently is engaged in a number of enforcement actions which should result in refund money to be distributed by OHA. Furthermore, DOE currently is litigating before the courts a number of cases involving violations or alleged violations of the EPAA regulations. It is likely that OHA will be

These proceedings are relevant to this decision since in them OHA has before it the question whether, and if so to what extent, refiners as a class suffered injury as a result of violations or alleged violations of the EPAA regulations. OHA has stated "[t]he issue of the impact of crude oil miscertifications on refiners is central to . . . ongoing special refund proceeding[s] being conducted by the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V." Notice of Implementation of Special Refund Procedures and Solicitations of Comments, 48 FR 57608, 57611 (December 30, 1983).

In one case the U.S. District Court for the District of Kansas remanded to OHA "the task of attempting to determine what parties bore the cost of the [stripper well] overcharges and in what amounts." *In Re The Department of Energy Stripper Well Exemption Litigation*, 578 F. Supp. 586, 596 (D. Kan. 1983). Pursuant to this court order OHA now is conducting an evidentiary hearing to determine the extent, if any, to which refiners as a class were injured by these crude oil overcharges. In stating its preliminary views concerning who bore the costs of overcharges and in what amounts, OHA concluded that:

[B]ecause of the operation of the Entitlements Program, the impact of the reduction of the national supply of price-controlled crude oil resulting from miscertifications of crude oil was dispersed in the first instance to all participants in the Entitlements Program. A refiner which purchased and paid an increased amount for miscertified crude oil received additional entitlements through the Entitlements Program. These entitlements were then sold to recoup the difference between the higher price paid for the crude oil and the price for old oil. In this manner, the impact of the miscertifications was shifted from direct purchasers of the crude oil involved to participants in the Entitlements Program. Consequently, the post-entitlements acquisition cost of crude oil increased by the same amount per barrel for every domestic refiner. Notice of Implementation of Special Refund Procedures and Solicitation of Comments, 48 FR 57608, 57610 (December 30, 1983). See also *Union Oil Co. v. DOE*, 688 F.2d 797, 802 (TECA 1982); 9 DOE ¶ 82,553 (1982); 9 DOE ¶82,521 (1982); *Getty Oil Company*, 1 DOE ¶ 80,102 (1977).

OHA is in the process of collecting and analyzing evidence concerning

involved in the distribution of a considerable amount of refund money as a result of these cases. For example, the litigation concerning the counting of injection wells in the computations of stripper well properties gave rise to an escrow account of over \$1 billion which TECA ultimately decided resulted from violations of the EPAA regulations. *In Re The Department of Energy Stripper Well Exemption Litigation*, 690 F.2d 1375 (TECA 1982), cert. denied, 103 S. Ct. 763 (1983).

whether, and if so to what extent, these increased costs injured refiners as a class.⁷ While this OHA examination has not resulted in any final determinations, it does suggest a possibility that some refund money may correspond to injury sustained by refiners as a class. If OHA determines that a portion of refund money corresponds to injury to refiners as a class, then, as a matter of policy, DOE has determined that OHA should use this refund money to fund receive orders. Receive orders resulted from individual adjudications which held that the EPAA regulations imposed special hardship on individual firms during the period of controls. Section 504 of the DOE Act imposes an obligation on DOE to provide adjustments to the EPAA regulations as necessary to prevent such hardship. Even though the EPAA regulations, including the Entitlements Program, have terminated, DOE believes fairness requires an attempt to use another means of granting relief to firms with adjudicated hardship.

In the event that OHA, based on evidence presented to it, determines that a portion of refund money corresponds to the injury sustained by refiners as a class, existing exception and remedial authority will enable it to carry out the policy decision announced in this Notice and fund receive orders from that portion of refund money. Invoking OHA's exception and remedial authority to distribute refund money to firms with receive orders would further the purposes of the EPAA since the money would be targeted to firms which received an adjudication that they suffered special hardship under the regulations. Such a distribution would remove any remnants of this hardship to individual firms caused by EPAA regulations. In particular, the policy decision set forth in this Notice is of special significance to small and independent refiners because over three-fourths of the amount of relief provided in all the specific adjudications resulting in receive orders is directed to small and independent refiners. In this respect, this policy decision furthers the

⁷ As a framework for collecting and analyzing this evidence, OHA has indicated four approaches: (1) consideration of the feasibility of tracing the impact of crude oil overcharges; (2) analysis of profit margins obtained by refiners as an aid in determining whether refiners absorbed any increased crude oil costs; (3) consideration of the extent to which the existence of sizable cost banks is proof refiners absorbed increased crude oil costs; and, (4) consideration of theories regarding possible impact of overcharges on refiners as a class using marginal economic analysis. Notice of Implementation of Special Refund Procedures and Solicitations of Comments, 48 FR 57608 (December 30, 1983); see also, *Stripper Well Exemption Litigation*, HF11-0026, 12 DOE ¶ 85,017 (May 2, 1984).

statutory objectives of the EPAA, because small and independent refiners are a class specified in that statute for special protection.

Use of this refund money would be entirely consistent with the effects of receive orders issued during the period of the period of controls and the operation of the Entitlements Program. During that time refiners as a class funded receive orders because the Entitlements relief directed to recipients of exception orders simply increased *pro rata* the burden borne by all refiners in the Entitlements Program. Under the policy decision announced in this Notice refiners as a class again will, in effect, fund receive orders from the refund money associated with overcharges actually borne by refiners as a class. Under the approach of the policy announced by this Notice, however, individual refiners would not now be required to experience any "out-of-pocket" transfers of money among refiners in order to effectuate receive orders. Moreover, use of refund money would require no new regulatory framework for collecting and distributing the money to fund receive orders since OHA proceedings are presently taking place and would continue regardless of the policy decision announced by this Notice.

DOE's exception authority gives it "broad discretion and flexibility to attain the objectives of the EPAA and on several occasions the courts have recognized the power of the agency to grant exception relief even in the absence of a specific grant of statutory authority." *Bonnaffons v. DOE*, 646 F.2d 548, 552 (TECA 1981); see also *Bonnaffons v. DOE*, 492 F. Supp. 1276, 1280-82 (D.D.C. 1980); *Marathon Oil Co. v. FEA*, 547 F.2d 1140, 1145 (TECA 1976); *New England Petroleum Corp. v. FEA*, 455 F. Supp. 1280, 1295-1300 (S.D.N.Y. 1978). As for remedial authority, in Ruling 1984-1, DOE thoroughly examined all the law bearing on its remedial authority concerning violations and alleged violations of the EPAA regulations. This review indicated that the courts have measured DOE's remedial authority by the broad statutory objectives of the EPAA, and accordingly that authority is broad enough to sustain "restitutionary actions as are appropriate in the circumstances of a given matter." Ruling 1984-1 stated "the courts, in ordering or affirming a variety of remedies, have almost uniformly observed the great breadth of the statutory concept of restitution and approved DOE's interpretation of its remedial authority." See, e.g., *United States v. Exxon Corp.*, 516 F. Supp. 816

(D.D.C. 1983), appealed, Nos. DC-91 *et seq.* (TECA July 8, 1983); *Pennzoil Co. v. DOE*, 4 Energy Mgmt. (CCH) ¶ 26,415 (D. Del.), *aff'd* on other grounds *sub. nom. Cities Service Company v. DOE*, 715, F.2d 572 (TECA 1983). Ruling 1984-1 further stated that "the courts have regularly found DOE's remedial powers to be expansive because of the broad enforcement and regulatory authority conferred on the agency and its predecessors." *Sauder v. DOE*, 648 F.2d 1341 (TECA 1981); *Bonray Oil Co. v. DOE*, 601 F.2d 1191 (TECA 1979), *aff'd* on basis of district court opinion, 472 F. Supp. 899 (W.D. Okla. 1978); see also *University of Southern California v. Cost of Living Council*, 472 F.2d 1065 (TECA 1972), *cert. denied*, 410 U.S. 928 (1973).

B. Dispense Orders

DOE has decided not to give effect to dispense orders. Effectuation of the orders in today's unregulated petroleum market would be inconsistent with the original purpose of the orders and inconsistent with the purposes of the EPAA, especially preservation of the competitive viability of small and independent refiners.

OHA issued dispense orders to fine-tune the relief previously granted to firms adjudicated to have suffered hardship under the EPAA regulations. In general, this was done in the following manner. If OHA determined an order did not have the intended effect, it would issue another receive order or a dispense order to achieve with precision the originally intended effect. During the period of controls, OHA could attempt such adjustments and readjustments because it could calculate to a large extent the effect an infusion of money would have on a firm's financial position. Such calculation was possible because a firm's selling prices for its products were determined by the constraints of the EPAA regulations and the workings of a thoroughly regulated market. In today's deregulated market, such calculation and adjustment is impossible since market forces, rather than regulations, establish selling prices. Moreover, the passage of time, in some cases as much as six years, has eroded any nexus that existed between relief granted and the intended corrective effect of dispense orders.

Dispense orders were not intended to penalize their recipients. They were intended to make the regulatory system operate in as even and precise a manner as possible. During controls, refiners had to pass through to their customers the benefits obtained from receive orders and could recover from their customers the costs of dispense orders.

Indeed, one of the fundamental premises of the Entitlements Program was the ability of refiners to pass through their Entitlements costs in the form of increases in the prices of their refined products. See 39 FR 42249 (December 4, 1974); *Pasco, Inc. v. FEA*, 525 F.2d 1391, 1395 (TECA 1975).⁸ In today's highly competitive free market the regulatory costs of dispense orders could not be passed through in the prices of refined product without risking loss of market share. Effectuation of dispense orders in today's market would adversely impact a refiner's competitive viability by making it either absorb costs or charge above-market prices and risk loss of customers. Thus giving effect to dispense orders would impose hardship on small and independent refiners contrary to the purposes of the EPAA, would risk market disruption without any corresponding benefit to the public interest, and would not make the now long-defunct EPAA regulatory system operate more evenly and precisely.

C. Pending and Future Applications

DOE has decided that OHA should develop a new standard to apply to pending⁹ and future applications for exception relief. DOE believes that a distinction must be made between these applications and already adjudicated orders. The considerations which support effectuation of already adjudicated claims are different from those present in not yet adjudicated claims. Pending and future applications must be decided on their current merits. Consistency with the purposes of the EPAA in today's petroleum market requires an end to interventions in the marketplace. DOE believes firms with pending and future requests for regulatory adjustments must be held to a standard for exception relief which takes into account E.O. 12287 and the return to a decontrolled market. These firms must show that they are suffering hardship in the current market because of the prior operation of the EPAA regulations and that the grant of exception relief would be consistent with the purposes of the EPAA.

⁸ One of the premises upon which exception relief was granted under the Delta standards was that a firm would be unable to increase its selling price in order to absorb the costs of purchasing entitlements. See *Southland Oil Co.*, 5 DOE ¶ 81,278, at 83,236 (1980); *San Joaquin Refining Co.*, 2 DOE ¶ 81,167, at 83,615 (1976).

⁹ Pending applications do not include those proceedings in which an initial order has been issued and OHA is only considering adjustments contemplated in the initial order.

III. Discussion of Comments

DOE received written and oral comments in response to its tentative decision concerning exception orders. These comments represented the views of 10 members of Congress, 14 States, 9 major refiners, 32 independent and small refiners, 2 utilities, 1 trade association, and 2 individuals. The comments concentrated on the specific questions asked in the July Notice and the August Notice, especially those questions concerning whether effect should be given to exception orders and what method should be used to fund receive orders. Because the comments concentrated on these questions, ERA has structured its discussion of comments around these questions.

July Notice

Question One: Whether DOE should attempt to effectuate exception orders?

In general, the commenters treated receive orders and dispense orders separately.

Receive Orders

Twenty-three commenters favored effectuation of receive orders. These commenters argued DOE has a mandatory duty under section 504(a) of the DOE Act to give effect to receive orders. They also contended that section 504(b) of the DOE Act prohibits DOE from reviewing orders issued by FERC. The commenters stressed the difference between firms with receive orders and ordinary participants in the Entitlements program. Firms with receive orders were granted exception relief only after an adjudicatory proceeding which found they had experienced hardship because of the regulations. Effectuation, it was argued, would not disrupt the market. In support of this contention, several commenters cited a study by their expert witness which posited that the one-time infusion of the amount of money represented by receive orders would have no effect on individual firms or the market as a whole.

Nine commenters opposed effectuation of receive orders and argued the same reasons which dictated that no further entitlements lists be published also dictate that no more exception orders be given effect. They indicated that the conditions under which these orders were issued no longer exist. In particular, many receive orders¹⁰ were intended to provide firms

with a specific rate of return. This rate of return, however, was dependent on the operation of the regulations and cannot be guaranteed in a free market.

Dispense Orders

Twenty-four commenters opposed effectuation of dispense orders. These commenters believed that the same reasons which prompted DOE's decision not to publish any further Entitlements lists also dictated a decision not to give effect to dispense orders. These commenters stressed the hardship on individual refiners that would occur were dispense orders to be effectuated in today's market. It was claimed that the average refiner with a dispense order would have to disburse over \$7.4 million. Just three small and independent refiners situated in the Rocky Mountain Region would be required to pay out a total of over \$74 million. The commenters believed the current competitive market would prevent the recovery of costs incurred because of dispense orders. These commenters also argued that DOE's decisions on receive orders and on dispense orders should be independent since there is no nexus between the two types of orders.

Seven commenters favored effectuation of dispense orders. In general, these commenters viewed dispense orders simply as repayments of excessive exception relief granted in the past. One commenter would give effect to dispense orders only if receive orders were given effect.

DOE's Response: While the Decision section deals with the issues raised by Question One, DOE believes it would be helpful to reiterate its position concerning the conditional nature of Entitlements exception orders. DOE does not agree with the contention that it has a mandatory duty to give effect to Entitlements exception orders. These orders were premised on the continued operation of the Entitlements Program. The relief under these orders was expressed in terms of Entitlements transactions and did not create any unconditional rights or obligations in the event no further Entitlements lists were published. In light of the decision not to publish any further Entitlements lists, DOE must reevaluate the form and appropriateness of relief under Entitlements exception orders.

month increments and implemented on entitlements notices for the period involved on the basis of firms' projected financial data. At the close of each fiscal year, a "year-end review" was conducted based on firms' actual financial data, and adjustments to the level of relief granted were made by OHA in a subsequent order.

DOE is not reviewing FERC orders. DOE is performing the necessary task of reevaluating relief under Entitlements exception orders in light of the decision not to publish any further lists. Indeed, FERC has provided that if no further Entitlements lists were published, DOE should decide what other action, if any, would be appropriate. Moreover, pursuant to section 404 of the DOE Act, FERC was given the opportunity to assert its jurisdiction over this proceeding if it would affect a function of FERC significantly. FERC declined jurisdiction.

Question Two: Whether overcharge funds should be used to satisfy claims by those entities with orders for additional exception relief?

Thirty-one commenters supported the use of overcharge funds to satisfy receive orders. In general, they found the use of overcharge funds a practical and fair means to satisfy receive orders. The commenters advanced several theories to justify the use of overcharge funds. Some commenters thought that some percentage of the injury resulting from violations of the regulations could be attributed to refiners as a class and that this percentage of the overcharge money could be used to fund refiners' obligation as a class to satisfy receive orders. Others advocated a theory which would give receive orders a direct claim and, in fact, the highest priority to overcharge funds. This theory emphasized that during the normal course of the Entitlements Program, the dollar amounts of receive orders were satisfied without regard to the normal working of the Entitlements Program. In effect, receive orders then came "off the top" of the monetary equivalent of the amount of crude oil available for allocation among refiners by reducing the pool of money available to all participants in the Entitlements Program and thus increased costs to all refiners and their customers. These commenters argued that firms with receive orders should be given the same priority to overcharge money that these firms received during the operation of the Entitlements Program. Finally, many commenters noted that in a second stage proceeding after all the identified injured parties had been satisfied, firms with receive orders would have a strong equitable claim to any remaining funds.

Twenty-one commenters, including 14 States, opposed the use of overcharge funds. Three States indicated, however, that they would not oppose the use of overcharge funds to the extent that refiners were identified as being injured.

DOE's Response: DOE has indicated in the Decision section its policy

¹⁰ These types of orders generally arose from relief received under the standards set forth in *Delta Refining Co.*, 2 FEA ¶ 83.275 (1975) and *Beacon Oil Co.*, 3 FEA ¶ 83.209 (1976). *Delta/Beacon* exception relief was granted by means of a two-step process. Initially, relief was granted prospectively in six

concerning the use of refund money¹¹ to satisfy receive orders if OHA makes a final determination that refiners as a class were injured by petroleum overcharges. DOE wishes to emphasize that, if OHA determines a portion of refund money corresponds to the injury from overcharges sustained by refiners as a class, the policy decision announced in this Notice affects only refiners with receive orders. Whether in today's decontrolled market it is equitable as a general matter to distribute money to individual refiners whose claims are based only on injury to refiners as a class is a matter for OHA to determine under its general authority, and nothing in this Notice is intended to provide or withhold any authority for such a distribution. In addition, DOE is expressing no opinion in this Notice concerning the funding of receive orders by means of refund money other than that which corresponds to injury to refiners as a class.

Question Three: Whether any other method might be used to satisfy orders for additional exception relief?

Twelve commenters suggested the use of money from dispense orders to satisfy receive orders. Most of these commenters listed this source as an alternative to refund money and several of these commenters noted practical problems concerning this source. Twelve commenters opposed the use of money from dispense orders. They contended it would be inequitable to make these firms bear the entire burden of satisfying receive orders. They argued the lack of any nexus between dispense orders and receive orders since under the normal operation of the Entitlements Program the burden of satisfying receive orders was distributed proportionately among every other participant in the Entitlements Program, both buyers and sellers. They noted that if the receive orders had been funded by means of the publication of an Entitlements list, the total proportionate share of the 14 small and independent refiners with dispense orders would have been only \$1.7 million, less than 2.5% of the relief granted under receive orders. If dispense orders were given effect to fund receive orders, then the firms with dispense orders would pay more than 61 times their proportionate share. DOE does not believe that money from dispense orders should be used to satisfy receive orders because such action would be inconsistent with the original intent and workings of the dispense orders within

the overall regulatory system, and that such a concentration of the economic burden of effectuating receive orders in this manner would conflict as well as with the objectives of the EPAA.

Three commenters suggested that money from consent orders be used to satisfy receive orders. These commenters argued that DOE has the broadest discretion over the use of funds derived from consent orders since it does not result from findings of specific regulatory violations. The discussion in the Decision section contemplates that money from consent orders is included within refund money.

Three commenters suggested the use of a "mini-list" to satisfy receive orders. Under this approach, all participants in the Entitlements Program would pay their proportionate shares of the receive orders. Although the "mini-list" was proposed as a simple solution, DOE believes it would be basically a recreation of the Entitlements Program and would have essentially the same deficiencies that motivated DOE to decide not to publish any further lists, and would create the problems associated with establishing a new program and requiring reports based on the past periods. Like publishing further Entitlements lists, this approach would require every refiner to make "out-of-pocket" contributions to fund an Entitlements pool.

Question Four: What should be done about claims for exception relief not yet finally adjudicated?

Ten commenters expressed the opinion that pending applications for exception relief should be treated the same as already adjudicated orders. Several comments thought final decisions should be expedited. One commenter opposed further action on pending applications. As discussed in the Decision section, DOE believes pending applications should be subject to a standard that requires a showing of hardship in the current market because of the EPAA regulations.

Question Five: What should be done about claims for exception relief for which an application has not yet been filed with OHA?

Seven commenters said that DOE should accept new claims for exception relief. Several commenters cited the requirement under section 504(a) of the DOE Act that DOE consider claims for exception relief. Some commenters thought new applications should relate to the decision not to publish any further Entitlements lists. Five commenters opposed consideration of new applications on the grounds of laches.

DOE believes that new applications should be accepted since section 504(a) of the DOE Act does not impose a time limit on applications for exception relief. The passage of time, however, does raise questions concerning the extent to which a firm's hardship in the current market can be regarded as the result of the EPAA regulations. As discussed in the Decision section, DOE believes new applications should show hardship in the current market because of the EPAA regulations.

Question Six: Whether Entitlements sales benefits awarded to firms prior to the establishment of the Office of Hearings and Appeals or which were later superseded by amendments to the regulations should be treated as exception relief?

No commenter indicated that this question was applicable to it.

August Notice

Question One: What should be done about firms with claims for additional exception relief which also have been issued or are in the process of being issued orders requiring them to pay back excessive relief?

Six commenters thought the "netting" of a firm's relief under receive orders by the amount of its obligations under dispense orders was equitable. Three commenters thought netting would be unfair and discriminatory.

DOE believes that netting is not unfair and discriminatory since it was never the intent of any exception order to give a firm more than the net amount of its adjudicated receive orders and adjudicated dispense orders. Accordingly, DOE believes OHA should continue netting in carrying out the policy announced in this Notice.

Question Two: Are exception cases for relief permitting firms to file amended Entitlements reports mooted by DOE's final decision not to issue the January 1981 and final Entitlements Adjustments lists?

Seven commenters believe such applications are mooted. Three commenters believe such applications are not mooted. No commenter advanced a reasonable distinction between these and other exception cases. Accordingly, DOE believes requests to file amended reports were not mooted by its non-publication decision and will be treated like other entitlements exception claims.

Other Issues

Consumers Power and the State of Michigan requested that the Entitlements appeal of Consumers Power be treated like an exception

¹¹ As defined in this Notice, the term refund money includes overcharge funds.

order. DOE's analysis of the Entitlements appeal of Consumers Power indicates it presents essentially the same issues as an adjudicated receive order. Consequently, Consumers Power's adjudicated order should be treated under the policy decision announced by this Notice like a receive order.

One commenter questioned the extent to which the Citronelle exception order would be affected by this proceeding. The Citronelle order was an exception relating to the Tertiary Incentive Program and the certification regulations. Issues related to the Citronelle order are being adjudicated before DOE and the Courts.

IV. Procedural Matters

To the extent that this Notice would be subject to informal rulemaking requirements, DOE has complied with the procedural rulemaking requirements set forth below. For purposes of these procedural requirements, DOE's decision concerning Entitlements exception orders will be referred to as a "final rule."

A. Executive Order 12291

Under section 8(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981), the Director of the Office of Management and Budget ("Director") is authorized to exempt any class or category of regulations from any or all requirements of the Executive Order.

An exemption was requested of the Director for those actions taken to implement Executive Order No. 12287. The request was granted.

B. NEPA Review

DOE has determined that this action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act. In this Notice, DOE is exercising its authority to establish policies concerning the treatment of Entitlements exception orders.

C. Section 404 of the DOE Act

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7101 et seq., Pub. L. 95-91), the tentative decision on today's action was referred to the Federal Energy Regulatory Commission for a determination as to whether it would significantly affect any matter within the Commission's jurisdiction. The Commission

determined that its jurisdiction would not be affected.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the preparation and publication of a final regulatory flexibility analysis at the time of publication of the notice of final rule, if the final rule is likely to have a significant impact on a substantial number of small entities.

This action, if considered a "final rule," removes regulatory requirements and economic distortions caused by the Entitlements exception orders. For those firms with dispense orders that could be classified as "small entities" by reason of being "small governmental jurisdictions" (e.g., governmental entities that were included pursuant to the petroleum substitutes provisions) or "small refiners," the "final rule" generally removes a financial burden from them as a class.

DOE's decision concerning Entitlements exception orders will not adversely affect small entities with receive orders since an attempt will be made to give effect to those orders. Some small entities may be adversely affected by giving effect to those orders. DOE's policy, however, is to effectuate the orders in a manner which minimizes such adverse effects. The preceding discussion in this Notice, which analyzes the impacts of the "final rule" and describe the reasons therefor, satisfies the statutory requirements and constitutes the final regulatory flexibility analysis required by section 604 of the Act for DOE's decision.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 et seq., Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 et seq., Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq., Pub. L. 94-163, amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. 7101 et seq., Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; E.O. 46 FR 9909)

In consideration of the foregoing, this final decision is issued in Washington, D.C. on January 9, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-1017 Filed 1-9-85; 4:53 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-208-000, et al.]

El Paso Electric Company, et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ER85-208-000]

January 7, 1985.

Take notice that on December 28, 1984, El Paso Electric Company filed as an initial rate schedule a Service Schedule C to the Interchange Agreement between El Paso Electric Company and San Diego Gas & Electric Company. Service Schedule C sets forth the terms and conditions under which EPE will provide Nonfirm Transmission Service to SDG&E.

El Paso requests that Service Schedule C be made effective on December 31, 1984, and that waiver of the notice provisions and other requirements of the Commission's regulation be granted as appropriate.

Copies of the filing have been served on the Public Utility Commission of Texas, New Mexico Public Service Commission and San Diego Gas & Electric Company.

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Sierra Pacific Power Company

[Docket No. ER85-206-000]

January 7, 1985.

Take notice that on December 27, 1984, Sierra Pacific Power Company (Sierra) submitted for filing its seventh energy charge revision to reflect a reduction in demand charges from Utah Power and Light Company (UP&L).

These revised rates will be used in recomputing billings made by Sierra under Schedule R-1 and R-2 for the period June 1, 1983, through November 30, 1984, in recognition of the refund received from UP&L and the reduction in the demand charge.

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER82-481-012]

January 7, 1985.

Take notice that on December 28, 1984, Arizona Public Service Company (APS) submitted for filing a refund compliance report pursuant to the

Commission's Opinion No. 219 issued on May 7, 1984.

APS states that the required refunds, including interest, were forwarded to all affected parties on December 17, 1984.

Comment date: January 22, 1985, in accordance with Standard Paragraph H at the end of this notice.

4. Southwestern Electric Power Company

[Docket No. EC85-7-000]

January 8, 1985.

Take notice that on December 21, 1984, Southwestern Electric Power Company ("SWEPCO"), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 203 of the Federal Power Act and to Part 33 of the Commission's regulations, seeking an order authorizing the sale by SWEPCO to the Grand River Dam Authority ("GRDA") of approximately 39 miles of 161 kV transmission line between the Arklaoma "O" Substation in Mayes County, Oklahoma and the Oklahoma-Arkansas State line. SWEPCO states that in the spring of 1985, when a new 345 kV line presently under construction is placed in service, the 161 kV line proposed to be sold will become surplus transmission capacity. GRDA has an immediate need for the 161 kV line to provide more reliable service to GRDA customers in Oklahoma.

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER84-621-001]

January 7, 1985.

Take notice that on December 28, 1984, the Public Service Company of New Mexico (PNM) submitted for filing Amendment No. 1 (Amendment), dated as of December 20, 1984, to Service Schedule D (Service Schedule D) to the Interconnection Agreement (Interconnection Agreement) between PNM and NPC.

PNM also submitted a Notice of Termination of Service Schedule D, dated as of December 21, 1984 and a Statement of Reasons for Termination, dated as of December 21, 1984.

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-1038 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-2134-000, et al.]

S. Robert Fox, Jr., et al.; Interlocking Directorate Filings

January 7, 1985.

Take notice that the following filings have been made with the Commission:

1. S. Robert Fox, Jr.

[Docket No. ID-2134-000]

Take notice that on November 26, 1984, S. Robert Fox, Jr., pursuant to section 305(b) of the Federal Power Act, tendered for filing an application for authority to hold the following positions:

Vice President—Facilities, Development:
Cambridge Electric Light Company; Canal Electric Company, Commonwealth Electric Company

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Stuart J. Northrop

[Docket No. ID-2142-000]

Take notice that on December 10, 1984, Stuart J. Northrop filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, The Dayton Power & Light Company
Director, Fischer & Porter Company

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. D.E. Knowles, Jr.

[Docket No. ID-2138-000]

Take notice that on November 28, 1984, D.E. Knowles, Jr. (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Group Vice President, Louisiana Power & Light Company, Public Utility
Group Vice President, New Orleans Public Service Inc., Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. G.D. McLendon

[Docket No. ID-2136-000]

Take notice that on November 28, 1984, G.D. McLendon (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Executive Vice President, Louisiana Power & Light Company, Public Utility
Executive Vice President, New Orleans Public Service, Inc., Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

G.F. Delery

[Docket No. ID-2140-000]

Take notice that on November 28, 1984, G.F. Delery (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Louisiana Power & Light Company, Public Utility
Vice President, New Orleans Public Service Inc., Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. A.L. Parry, Jr.

[Docket No. ID-2143-000]

Take notice that on December 10, 1984, A.L. Parry, Jr. filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Philadelphia Electric Company
Director, Philadelphia Electric Power Company
Director, The Susquehanna Power Company
Director, The Susquehanna Electric Company

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Richard L. Murlowski

[Docket No. ID-2135-000]

Take notice that on November 28, 1984, Richard L. Murlowski (applicant)

filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Louisiana Power & Light Company, Public Utility
Senior Vice President, New Orleans Public Service Inc., Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. R.J. Abadie

[Docket No. ID-2141-000]

Take notice that on November 28, 1984, R.J. Abadie (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Controller, New Orleans Public Service, Public Utility
Controller, Louisiana Power & Light Company, Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Malcolm H. McLetchie

[Docket No. ID-2137-000]

Take notice that on November 28, 1984, Malcolm H. McLetchie (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Louisiana Power & Light Company, Public Utility
Senior Vice President and Treasurer, New Orleans Public Service Inc., Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Malcolm L. Hurstell

[Docket No. ID-2139-000]

Take notice that on November 28, 1984, Malcolm L. Hurstell (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, New Orleans Public Service Inc., Public Utility
Senior Vice President, Louisiana Power & Light Company, Public Utility

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. H. Frederick Christie

[Docket No. ID-2148-000]

Take notice that on December 28, 1984, H. Frederick Christie filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, President and Chief Financial Officer, Southern California Edison Company
Director, Ducommun Incorporated

Comment date: January 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties 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. 85-1036 Filed 1-11-85; 8:45 am]

BILLING CODE 9717-01-M

[Docket Nos. QF85-105-000, et al.]

Transworld Wind Corp., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Take notice that the following filings have been made with the Commission:

1. Transworld Wind Corp.

[Docket No. QF85-105-000]

January 4, 1985.

On November 26, 1984, Transworld Wind Corp. (Applicant), 777 E. Tahquitz-McCallum Way, Suite 333, Palm Springs, California 92262 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Cabazon Windpark will be located near other windpark developers in the San Geronio Pass near Palm Springs, California. Applicant plans to install an initial 160 wind turbine units at 92 kilowatts each and 60 units at 80 kilowatts each for an initial rate capacity of 22.5 megawatts. Future installations are projected to increase the total capacity up to 60 megawatts. The windpark substation will operate in parallel with Southern California Edison Company.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

2. Harold Buzzard

[Docket No. QF85-120-000]

January 4, 1985.

On December 3, 1984, Harold Buzzard (Applicant), 115 N. Cherokee Grove, Oklahoma 74344 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility located in Delaware County, Oklahoma, will consist of an engine generator system and hot water recovery system. Exhaust from the engine recovered in the hot water system will supply heat for a commercial greenhouse. The primary energy source will be natural gas. The electric power production capacity will be 440 kilowatts. Installation will begin in 1985.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

3. Colonial Sugars, Inc.

[Docket No. QF85-128-000]

January 7, 1985.

On December 10, 1984, Colonial Sugars, Inc. (Applicant), of Gramercy, Louisiana 70052, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's address in Gramercy, Louisiana. The facility contains steam generators, and four turbine-generator sets. The exhaust steam is used for heating in the sugar refinery processes. The electric power production of the facility is 7,550 KW which is integrated with the plant distribution system. The primary energy source is natural gas. The facility was installed prior to March 13, 1980.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

4. American Enka Company

[Docket No. QF85-122-000]

January 7, 1985.

On December 7, 1984, American Enka Company (Applicant), of Enka, North Carolina 28728, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's

regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Lowland, Tennessee plant near Morristown, Tennessee. The facility will contain existing multiboiler steam generators with a new steam turbine-generator. The exhausted steam from the turbine will be used for heating in a rayon staple fiber manufacturing plant. The electric power production capacity of the facility is 340 KW which will be supplied to the plant distribution system. The primary energy source will be coal. Installation of the facility is expected to begin the second quarter of 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

5. American Enka Company

[Docket No. QF85-125-000]

January 7, 1985.

On December 6, 1984, American Enka Company (Applicant), of Enka, North Carolina 28728, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Lowland, Tennessee plant near Morristown, Tennessee. The facility will contain existing multiboiler steam generators with a new steam turbine-generator. The exhausted steam from the turbine will be used for heating in a rayon staple fiber manufacturing plant. The electric power production capacity of the facility is 373 KW which will be supplied to the plant distribution system. The primary energy source will be coal. Installation of the facility is expected to begin in the first quarter of 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-1037 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7293-001]

Borough of Ellwood City, PA; Surrender of Preliminary Permit

January 7, 1985.

Take notice that the Borough of Ellwood City, Pennsylvania, Permittee for the Ellwood City Project No. 7293 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 7293 was issued on October 13, 1983, and would have expired on September 30, 1986. The project would have been located on the Connoquenessing Creek, in Lawrence County, Pennsylvania.

The Permittee filed the request on November 23, 1984, and the preliminary permit for Project No. 7293 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-982 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-000]

El Paso Natural Gas Co.; Rate Change

January 7, 1985.

Take notice that on December 31, 1984, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of a change in rates (and certain program identified tariff provisions) for natural gas service rendered to jurisdictional customers served under all rate schedules contained in Volume No. 1 and certain rate schedules contained in Volume Nos. 2 and 2A of El Paso's FERC Gas Tariff. To implement this notice of change, El Paso tendered for filing and acceptance the revised and original tariff sheets identified on the attached Appendix. The proposed effective date for the tendered tariff sheets and the

change in rates the subject hereof, is February 1, 1985.

El Paso states that based upon the test period cost of service and projected sales quantities employed in the notice, El Paso projects a deficiency of some \$88.6 million in annual revenues from jurisdictional sales at current rates. The principal reason for this deficiency is the significant decline in sales by El Paso from its interstate transmission system since settlement of its last general rate change proceeding at Docket No. RP82-33, *et al.*, and a significant decrease in net liquid revenues credited to cost of service. Therefore, El Paso is proposing to increase rates for natural gas service rendered to jurisdictional customers but not by an amount sufficient to recover the full cost of service reflected in the notice.

Because of existing market conditions, the rate increase proposed is less than the 10.25¢ per dth rate necessary to recover the projected revenue deficiency. Rather, El Paso proposes a 4.02¢ per dth rate increase coupled with changes to its Purchased Gas Cost Adjustment ("PGA") provision to allow net liquid revenues to be offset against the purchased gas costs associated therewith in El Paso's semiannual PGA proceedings. Even in the absence of such a net liquid revenue adjustment to the PGA provision, the alternative rate increase proposed is only 7.08¢ per dth. Additionally, El Paso is transferring from its California commodity rate (Rate Schedule G) and its east-of-California commodity rate (Rate Schedules ABD-L and A-1-X) \$.2541 and \$.2893, respectively, to the fixed monthly charge under Section 3.1(b) of such Rate Schedules.

El Paso is proposing to revise its PGA to permit adjustments in the semiannual rate change filings thereunder to reduce the purchased gas cost by net liquid revenues. To the extent that waiver of § 154.38(d)(3) of the Federal Energy Regulatory Commission's ("Commission") Regulations is necessary to permit implementation, effective February 1, 1985, of such proposed revisions, El Paso respectfully requests such waiver. Without the ability to offset purchased gas costs with the net liquid revenues associated therewith, it will be necessary for El Paso to increase the rates for sales of natural gas proposed in the notice by 3.06¢ per dth. Therefore, should the above-described revision to El Paso's PGA provision not be permitted to become effective upon termination of the suspension period, El Paso requests that the alternative tariff sheets

incorporating said increase be accepted for filing, with a proposed effective date of February 1, 1985, in lieu of their respective counterparts. In such event, El Paso further requests that the Commission institute an investigation into the justness and reasonableness of including such revisions in EL Paso's PGA provision for prospective application following issuance of a final order approving such revisions, and that such investigation be conducted with and as a part of the section 4 proceeding initiated by the notice of change.

El Paso also proposes changes in rates for transportation and other related services. Such changes are: decreases in the demand and commodity charges for service through the San Juan Triangle of 22¢ per dth and 0.07¢ per dth, respectively; and increases of 2.86¢ per dth for Mainline Transmission, 0.60¢ per dth for Short Haul Service, 0.52¢ per dth for Processing, and 0.56¢ per dth for Dehydration Only. The rate for Field Gathering has been decreased by 15.66¢ per dth.

Pursuant to the decision of the United States Court of Appeals for the Fifth Circuit in *Mid-Louisiana Gas Co. v. FERC*, 664 F.2d 530 (1981), and the Commission's order issued September 30, 1982 at Docket No. TA82-2-33-001, El Paso began treating certain of its company-owned production, previously priced on a cost-of-service basis for ratemaking purposes, at prices authorized by Title I of the Natural Gas Policy Act of 1978. Petitions for review of the Commission's September 30, 1982 order are currently pending before the United States Court of Appeals for the District of Columbia Circuit. Should the outcome of such proceeding require El Paso to repric such production on a cost-of-service basis, the cost of service reflected in the notice could be significantly understated.

Given the uncertainty of the outcome of the aforementioned Court proceeding, El Paso has included in the notice *pro forma* tariff sheets which would establish a mechanism permitting El Paso to make periodic rate adjustments, coincident with its PGA rate changes, to reflect changes in the average cost of gas well royalties (including special overriding royalties) and production taxes associated with company-owned production priced on a cost-of-service basis for rate-making purposes. If El Paso should be required to repric certain of its company-owned production on a cost-of-service basis, El Paso respectfully requests that the Commission authorize El Paso to place the proposed mechanism into effect,

after a one-day suspension, for a limited term expiring on the date El Paso places into effect rate revisions under a general system-wide notice of rate change. To the extent that waiver of the Commission's Regulations, particularly § 154.38(d) (3), (4) and (5) thereof, is required to permit the periodic rate adjustments proposed, El Paso requests such waiver.

El Paso has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective February 1, 1985.

El Paso states that a copy of the notice of change has been served upon all affected customers served under El Paso's FERC Gas Tariff, shippers party to transportation arrangements providing for rates subject to those set forth on Sheet No. 1-D.2 of El Paso's Third Revised Volume No. 2 Tariff, all direct sale customers served from El Paso's interstate system under contracts providing for rates that are "Keyed" to jurisdictional rates, and upon all 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, NE., 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 January 14, 1985. 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. 85-963 Filed 1-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA85-1-55-002]

Mountain Fuel Resources, Inc.; Rate Change

January 7, 1985.

Take notice that on December 26, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance Substitute First Revised Sheet No. 13 to its FERC Gas Tariff, First Revised Volume No. 1. Resources proposes that this tariff sheet be effective December 1, 1984.

Resources states that Substitute First Revised Sheet No. 13 was submitted in

accordance with ordering paragraph E of the order issued November 30, 1984, in Docket Nos. TA85-1-55-000, -001 (PGA85-1 and IPR85-1). That order required Resources to file within 30 days of November 30, 1984, revised rates reflecting:

(a) The recently revised rates of Northwest Pipeline Corporation (Northwest); and

(b) Any other reductions in its pipeline suppliers' rates.

Resources states that it has incorporated the changes to Northwest's rates as reflected on Substitute Sixteenth Revised Sheet No. 10 of its FERC Gas Tariff, First Revised Volume No. 1, for gas purchased under Rate Schedule PL-1. Resources has also incorporated the recent changes to Colorado Interstate Gas Company's (CIG) rates as reflected on Alternate Twentieth Revised Sheet Nos. 7 and 8 of its FERC Gas Tariff, Original Volume No. 1, for gas purchased under Rate Schedules P-1 and EX-1.

Resources states that its intrastate pipeline suppliers' rates and charges have not changed and, accordingly, Substitute First Revised Sheet No. 13 reflects no change in charges from intrastate pipeline suppliers.

Resources requests waiver of any rules or regulations necessary in order to allow Substitute First Revised Sheet No. 13 to be effective December 1, 1984.

Resources states that it has provided a copy of the tariff filing to its jurisdictional customers and 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, 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 14, 1985. 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. 85-964 Filed 1-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA85-1-16-000 and TA85-1-16-001]

**National Fuel Gas Supply Corp.;
Proposed Tariff Change**

January 7, 1985.

Take notice that on December 31, 1984, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1: Second Revised Sheet No. 4 to be effective on February 1, 1985; First Revised Sheet Nos. 59, 60, 65 and 67 to be effective on September 30, 1984; Second Revised Sheet No. 66 to be effective on September 30, 1984; and First Revised Sheet Nos. 67-A and 68 to be effective on February 1, 1985.

National states that the purpose of these revised tariff sheets is to reflect a net decrease of 13.91¢ per Dth. This change consists of an increase in current purchase gas cost of 9.45¢ per Dth, a decrease in the purchase gas cost surcharge adjustment of 23.57¢ per Dth and the inclusion of a special surcharge adjustment of 0.21¢ per Dth.

The special surcharge adjustment of 0.21¢ per Dth is to recover an additional capital stock tax payment of \$369,726.78 including interest. The capital stock tax surcharge is a result of the settlement in Docket No. RP82-13 and is to be amortized over a twelve (12) month period.

National's filing also implements the Commission's Order in Docket No. RP84-61-000 which permitted National to flow-through its supplier refunds. National also requests waiver of the Incremental Pricing filing requirements. Moreover, National's filing implements Opinion No. 266 and Order No. 391.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory 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, NE., Washington, D.C. 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such petitions or protests should be filed on or before January 14, 1985. 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. 85-965 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP80-11-015, et al.]

**Natural Gas Pipeline Company of
America, et al.; Filing of Pipeline
Refund Reports and Refund Plans**

January 7, 1985.

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 on 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 the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before January 14, 1985. 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
9/28/84	Natural Gas Pipe Line Company of America	RP80-11-015	Report
10/29/84	Trunkline Gas Company	RP73-35-013	Report
10/31/84	Colorado Intra-state Gas Company	RP72-122-018	Report
11/21/84	Consolidated Gas Supply Corp.	RP85-26-000	Waiver
12/6/84	Columbia Gas Transmission Corp.	RP85-43-000	Request Waiver
12/10/84	Mississippi River Transmission Corp.	RP72-149-020	Request
12/13/84	Consolidated Gas Supply Corp.	RP82-115-005	Report
12/17/84	Ideal Basic Industries (Louisiana-Nevada Transit Company)	TA83-2-54-003	Report
12/21/84	Panhandle Eastern Pipe Line Company	RP77-32-004	Report
12/21/84	Panhandle Eastern Pipe Line Company	RP73-35-014	Report

[FR Doc. 85-965 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-9-000]

**Northern Natural Gas Co.; Division of
InterNorth, Inc.; Notice of Filing**

January 7, 1985.

Take Notice that on December 21, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) FERC Gas Tariffs:

Third Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 2
Seventh Revised Sheet No. 2a
Twenty-Fifth Revised Sheet No. 3
Tenth Revised Sheet No. 3a
First Revised Sheet No. 5
Original Sheet No. 5a
First Revised Sheet No. 6
Second Revised Sheet No. 6a
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 14
Original Sheet No. 14a
Original Sheet No. 14b
Original Sheet No. 14c
Original Sheet No. 14d

Third Revised Sheet No. 53
Original Sheet No. 53a
Second Revised Sheet No. 54
Third Revised Sheet No. 55
Second Revised Sheet No. 74
First Revised Sheet No. 74a
First Revised Sheet No. 74b
Second Revised Sheet No. 77
Second Revised Sheet No. 81
Second Revised Sheet No. 85
Second Revised Sheet No. 85c
Second Revised Sheet No. 85f
First Revised Sheet No. 85i

Original Volume No. 2

Twenty-Second Revised Sheet No. 1a
Twelfth Revised Sheet No. 1a.1
Second Revised Sheet No. 1a.3

These pages comprise a general maintenance filing to update Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. Revisions have been made to the Original Volume No. 2 Table of Contents, the Preliminary Statement, System Maps, General Terms and Conditions, and Service Agreement Forms of Third Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with 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 14, 1985. 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. 85-967 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-60-000]

Overthrust Pipeline Co; Proposed Change in FERC Gas Tariff

January 7, 1985.

Take notice that on December 31, 1984, Overthrust Pipeline Company (Overthrust) tendered for filing and acceptance Second Revised Sheet No. 6 and First Revised Sheet Nos. 3, 5, and 26 to its FERC Gas Tariff, Original Volume No. 1.

Overthrust states that Second Revised Sheet No. 6 is being submitted pursuant to ordering paragraph D of Opinion No. 138, issued by the Federal Energy Regulatory Commission (Commission) on March 12, 1982, in Docket No. CP79-60 (18 FERC ¶ 61,244), and that the rates shown on Second Revised Sheet No. 6 are supported by a cost and revenue study prepared in conformance with § 154.63 of the Commission's Regulations.

Overthrust states that the cost and revenue study shows that the annual revenues required to cover Overthrust's expenses, as well as a reasonable return on investment, will be \$822,509 lower than the level reflected in Overthrust's currently effective rates.

Overthrust states that First Revised Sheet No. 3 was submitted to update Overthrust's preliminary statement so that it reflects Tennessee Overthrust Pipeline Company as a partner. Sheet No. 5 was submitted to reflect the current service agreement dates, which agreements were approved by Commission letter ordered dated November 26, 1982, in Docket No. CP79-60-021. Sheet No. 26 was submitted in order to conform Overthrust's Tariff to the agreements authorized in Opinion No. 138.

Overthrust has requested that the tariff sheets submitted with this filing be

made effective February 1, 1985.

Overthrust states that a copy of its filing was mailed to its jurisdictional customers.

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 14, 1985. 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. 85-968 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS79-154-001, et al.]

Santa Fe Minerals, a Division of Santa Fe International Corporation (Santa Fe Minerals, Inc.), et al.; Applications for "Small Producer" Certification¹

January 8, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before January 23, 1985, 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 Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS79-154-001	12/20/84	Santa Fe Minerals, a Division of Santa Fe International Corporation (Santa Fe Minerals, Inc.), 4500 One Williams Center, Tulsa, Oklahoma 74172.
CS85-8-000	10/22/84	Alice Crouch Borden, Box 116, LeFlore, Oklahoma 74945.
CS85-13-000	11/9/84	Oklahoma Silurian Partners, 3000 First Nat'l Tower, Tulsa, Oklahoma 74103.
CS85-16-000	11/26/84	Lawrence O. Van Ryan and Delores E. Van Ryan, 1601 Kenwood Circle, Farmington, New Mexico 87401.
CS85-20-000	12/7/84	Golden Oil Company, 3650 South Yosemite, Suite 430, Denver, Colorado 80237.
CS85-21-000	12/10/84	Mary Frances Turner, Jr. Trust (3095), MBank Dallas, and J. Glenn Turner, Jr. Trustee, P.O. Box 225415, Dallas, Texas 75265.
CS85-23-000	12/17/84	Trailour Oil Company, 2014 Pinhook Rd., Suite 705, Lafayette, Louisiana 70508.
CS85-25-000	12/20/84	Acelite Energy Corporation, 1900 Grant Street, Suite 1050, Denver, Colorado 80203.

¹ On November 4, 1983, a new Texas corporation called Santa Fe Minerals, Inc. was formed for the purpose of providing administrative services to the Santa Fe International Corporation.

[FR Doc. 84-969 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-11-000]

Sea Robin Pipeline Co.; Notice of Complaint

January 8, 1985.

On December 7, 1984, Sea Robin Pipeline Company (Sea Robin) filed a complaint against Pogo Producing Company (Pogo). Sea Robin purchases natural gas from Pogo pursuant to contracts which contain take or pay clauses. Due to a decline in demand for natural gas by its customers, Sea Robin has been unable since September 1982 to take delivery of the minimum amounts of gas it agreed to purchase from Pogo. Under the take or pay clauses it must nevertheless pay for the

deficiency. However, it may recoup take or pay deficiencies by taking gas in excess of the minimum contract amount over the succeeding five years or the remaining term of the contract and paying only the difference, if any, between the prepaid prices and the price at the time of recoupment. Certain of Sea Robin's contracts with Pogo have expired, but Pogo claims that Sea Robin has an obligation under the Natural Gas Act (NGA) to continue purchasing gas under the terms of those contracts, including the take or pay clauses, pending abandonment proceedings under NGA section 7(b).

Sea Robin alleges that it cannot recoup its take or pay deficiencies because (1) the recoupment periods have either expired or are close to expiring, (2) production from the acreage subject to the contracts is insufficient, and (3) there is, in any event, insufficient demand for gas in its markets.

Accordingly, Sea Robin contends that the take or pay payments for gas never received would mean that it had paid more than the maximum lawful prices under the NGPA for the gas it did receive since it had already paid the maximum lawful price for that gas.

Sea Robin also contends, as to the expired contracts, that nothing in the NGA requires continued compliance with their take or pay clauses. Moreover, Sea Robin asserts that, since the terms of the contracts were limited to five years, their take or pay provisions violate 18 CFR 154.103 as to payments that Pogo contends are owed for gas not taken before or after expiration of the contracts.

Any person who desires to be heard or to make protest to the complaint should file, within 30 days after this notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed will be considered but will not make the protestants parties to the proceeding. Answers to the complaint shall be due on or before February 4, 1985 under Rules 206 and 213 (18 CFR 385.206 and 385.213).

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-970 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-10-000]

Southern Natural Gas Co.; Notice of Complaint

January 8, 1985.

On December 7, 1984, Southern Natural Gas Company (Southern) filed a complaint against Pogo Producing Company (Pogo). Southern purchases natural gas from Pogo pursuant to contracts which contain take or pay clauses. Due to a decline in demand for natural gas by its customers, Southern has been unable since April 1982 to take delivery of the minimum amounts of gas it agreed to purchase from Pogo. Under the take or pay clauses it must nevertheless pay for the deficiency. However, it may recoup take or pay deficiencies by taking gas in excess of the minimum contract amount over the remaining term of the contract and paying only the difference, if any, between the prepaid price and the price at the time of recoupment. Certain of Southern's contracts with Pogo have expired, but Pogo claims that Southern has an obligation under the Natural Gas Act (NGA) to continue purchasing gas under the terms of those contracts, including the take or pay clauses, pending abandonment proceedings under NGA section 7(b).

Southern alleges that it cannot recoup its take or pay deficiencies because (1) the recoupment periods have either expired or are close to expiring, (2) production from the acreage subject to the contracts is insufficient, and (3) there is, in any event, insufficient demand for gas in its markets. Accordingly, Southern contends that the take or pay payments for gas never received would mean that it had paid more than the maximum lawful price under the NGPA for the gas it did receive since it had already paid the maximum lawful price for that gas.

Southern also contends, as to the expired contracts, that nothing in the NGA requires continued compliance with their take or pay clauses. Moreover, Southern asserts that, since the terms of the expired contracts were limited to five years, their take or pay provisions violate 18 CFR 154.103 as to payments that Pogo contends are owed for gas not taken before or after expiration of the contracts.

Any person who desires to be heard or to make protest to the complaint should file, within 30 days after this notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of

Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed will be considered but will not make the protestants parties to the proceeding. Answers to the complaint shall be due on or before February 4, 1985 under Rules 206 and 213 (18 CFR 385.206 and 385.213).

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-971 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-17-000 and TA85-2-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 7, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 31, 1984 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, and Original Volume No. 2, six copies each of the following tariff sheets:

Fourth Revised Volume No. 1

Fourth Revised Seventy-first Revised Sheet No. 14 (3 pages)

Seventieth Revised Sheet No. 14A

Seventieth Revised Sheet No. 14B

Seventieth Revised Sheet No. 14C

Seventieth Revised Sheet No. 14D

Eleventh Revised Sheet No. 14E

Original Volume No. 2

Seventeenth Revised Sheet No. 235

Second Revised Ninth Revised Sheet No. 241

Eighteenth Revised Sheet No. 322

The above listed tariff sheets are being issued pursuant to Section 23, Purchased Gas Cost Adjustment and Section 27, Electric Power Cost (EPC) Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff.

The changes proposed in the filing consist of:

(1) A PGA decrease of \$0.159/dth in the demand component of Texas Eastern's rates and a decrease of \$0.1466/dth in the commodity component pursuant to Section 23 of Texas Eastern's tariff based on a net decrease in the projected cost of gas purchased from producers and pipeline suppliers and a negative balance in Account 191 as of October 31, 1984;

(2) Projected Incremental Pricing Surcharges for the period February, 1985 through July, 1985, pursuant to Section 23 of Texas Eastern's tariff and the Commission's regulations; and

(3) A change in rates for sales and transportation services pursuant to Section 27 of Texas Eastern's tariff to

reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1985 and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC Account of October 31, 1984.

The Commission's order issued January 31, 1984 in Texas Eastern's Docket No. TA84-1-17-001 required Texas Eastern to eliminate estimated balances for the month of November, 1983 from the Deferred Gas Cost Account Balance (Account 191) for the purpose of the surcharge calculation and further required Texas Eastern to continue this methodology in all future PGA filings. In light of this order and discussions between Texas Eastern and the Commission Staff, Texas Eastern in this instant filing is using the six months ended October 31, 1984 Account 191 balance, exclusive of October, 1984 estimates, for the surcharge calculation.

The Projected Incremental Pricing Surcharge Reduction calculated on Schedule No. 5 of the filing is zero, as it has been for all previous PGA filings since the August, 1980 filing. The Incremental Pricing Surcharges projected for the months of February, 1985 through July, 1985 are again very small as has been the case since their inception. The maximum surcharge absorption capability on Texas Eastern's incremental acquisition costs. The supplemental analysis of those incremental acquisition costs required by § 282.602(d)(2)(i) of the Regulations is, therefore, of no practical meaning. On the other hand, preparation of the supplemental analysis is extremely burdensome administratively and is exceedingly voluminous because it requires a compilation of purchases from approximately 800 separate contracts. Accordingly, to prevent the unnecessary and substantial expenditure of resources associated with preparation of a report which has no practical significance, Texas Eastern respectfully submits that good cause has been shown for waiver of § 282.602(d)(2)(i) of the Regulations to permit Texas Eastern to forego preparation of the supplemental analysis of incremental acquisition costs.

The proposed effective date of the above tariff sheets is February 1, 1985.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 14, 1985. 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. 85-972 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA82-1-21, et al.]

**Columbia Gas Transmission Corp.;
Informal Conference**

January 9, 1985.

Take notice that an informal conference in the above-docketed proceeding will be held on January 15, 1985, at 1:00 p.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

The purpose of the meeting will be to permit Columbia Gas Transmission Corporation to report to its customers and the Commission Staff on the status of negotiations with producer suppliers. Accordingly, pursuant to the Chief Judge's order, issued in these proceedings on November 14, 1984, producer parties are excluded from this meeting.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-1031 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C173-477-033 and C173-546-002]

**Pogo Producing Co.; Application for
Waiver of Optional Pricing Certificate
Condition and Petition To Amend
Certificates of Public Convenience and
Necessity**

January 10, 1985.

Take Notice that on January 3, 1985, Pogo Producing Company (Pogo) filed a Request For Waiver of Optional Pricing Certificate Condition and Petition to Amend Certificates of Public Convenience and Necessity to authorize Pogo to price all gas produced and sold pursuant to certificates previously issued in the above-referenced dockets at the NGPA maximum lawful prices.

Pogo states that under the current rates allowed in the effective certificates and at the lower optional procedure certificate rates charged and collected since October 1, 1973, Pogo has suffered a revenue shortfall by comparison to the otherwise applicable nationwide and NGPA prices of approximately \$52.8 million. Pogo proposes to amend the certificates to reprice the gas sold thereunder according to the provisions of the NGPA. Pogo states that such relief is necessary to encourage additional production and development particularly for reworkings and recompletions. Pogo states that the gas would continue to be sold to Sea Robin Pipeline Company.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 28, 1985 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with 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. 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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-1032 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6027-001]

**Public Utility District No. 1 of Lewis
County, Washington; Surrender of
Preliminary Permit**

January 10, 1985.

Take notice that Public Utility District No. 1 of Lewis County, Washington, Permittee for the Cortright Creek Project No. 6027, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6027 was issued on September 13, 1983, and would have expired on August 31, 1985. The project would have been located on Cortright Creek in Lewis County, Washington.

The Permittee filed the request on November 26, 1984, and the preliminary permit for Project No. 6027 shall remain

in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-1033 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-24-000]

South Carolina Public Service Authority; Application

January 9, 1985

Take notice that on December 20, 1984, the South Carolina Public Service Authority ("Authority") filed an application seeking an order authorizing the issuance of up to \$145,000,000 in Electric System Revenue Bonds. The Authority asks, in the alternative, an order dismissing the application for lack of jurisdiction. The Bonds are to be sold by competitive bid. The proceeds will be used to refund two Electric Revenue Note issues—\$75,000,000 due May 1, 1985, and \$60,000,000 due May 1, 1985.

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 §§ 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before January 22, 1985. 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. 85-1034 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC85-8-000]

West Penn Power Co; Application

January 10, 1985.

The Federal Energy Regulatory Commission issues notice that West Penn Power Company on January 3, 1985, tendered for filing, an Agreement between Pennsylvania Electric

Company and West Penn Power Company, for the sale by Pennsylvania Electric Company to West Penn Power Company of certain personal and real properties at Shingletown Substation in Harris Township, Centre County, Pennsylvania, and at Elko Substation in Fox Township, Elk County, Pennsylvania.

The Agreement provides for the sale by Pennsylvania Electric Company to West Penn Power Company of (1) property at Shingletown Substation consisting of three 230 kV oil circuit breakers with associated disconnecting equipment, 230 kV bus work, control switchboard and related relaying equipment, and the tract of property upon which the substation is located, and (2) property at Elk Substation consisting of one 230 kV oil circuit breaker with associated disconnecting equipment, 230 kV bus work, control switchboard and related relaying equipment, and the tract of property upon which the substation is located. These properties are now devoted exclusively to providing electric service to customers of West Penn Power Company.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1985. 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. 85-1035 Filed 1-11-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2756-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44

U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Toxics Programs

- Title: PCB Manufacturing, Processing, and Distribution in Commerce Exemptions (EPA #0857).

Abstract: Manufacturers, processors, and distributors of PCBs seeking an exemption to TSCA's ban of PCBs must submit certain health and environmental information. EPA will use this information to determine whether or not to grant the exemption.

Respondents: Manufacturers, processors, and distributors of PCBs.

Water Programs

- Title: Request for Discharge Authorization—Ore Recovery Mills (EPA #1013).

Abstract: Ore mills using the froth flotation process may request permission to discharge wastewater if necessary to eliminate interference in ore recovery. Applicants submit technical data once to the permit authority (EPA or state agency), which reviews it and approves/denies the discharge.

Respondents: Ore recovery mills.

Agency PRA Clearance Requests Completed by OMB

EPA #0029, Request for Modification, Revocation and Reissuance, or Termination of Permit, was approved 12/21/84 (OMB # 2040-0068; expires 12/31/87).

EPA #0092, Wastewater Permittee Report Of Planned Facility Changes, was approved 12/18/84 (OMB # 2040-0047; expires 12/31/85).

EPA #0125, Wastewater Permittee Report of Excessive Toxic Pollutant Discharge, was approved 12/18/84 (OMB # 2040-0045; expires 12/31/85).

EPA # 0220. Information Requirements for 404 Permits Applications, was approved 12/19/84 (OMB # 2000-0003; expires 12/31/85).

EPA # 0238. NPDES Application for Permit to Discharge Wastewater—Form 2C, was approved 12/18/84 (OMB # 2000-0059; expires 12/31/85).

EPA # 0818. Hazardous Waste Industry Studies, was approved 12/18/84 (OMB # 2000-0396; expires 6/31/87).

EPA # 1025. NPDES Notice of Actual Production Level—Automotive Manufacturing Industries, was approved 12/18/84 (OMB # 2040-0077; expires 12/31/85).

EPA # 1163. Notification of Construction Prior to Wastewater Permit Issuance, was approved 12/18/84 (OMB # 2040-0078; expires 12/31/85).

Comments on all parts of this notice should be sent to: Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division,

401 M Street, SW., Washington, D.C. 20460 and

Rick Otis (Water) or Carlos Tellez (Toxics),

Office of Management and Budget, Office of Information and Regulatory Affairs,

New Executive Office Building (Room 3228),

726 Jackson Place, NW., Washington, D.C. 20503

Dated: January 7, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-856 Filed 1-11-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 7, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Doris Peacock, Agency Clearance Officer, (202) 632-7513.

Persons wishing to comment on these information collections should contact Marty Wagner, Office of Management

and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

OMB Number: 3060-0099

Title: Annual Report Form M

Action: Revision

Respondents: Businesses

Estimated Annual Burden: 82

Respondents; 9,430 Hours

OMB Number: 3060-0058

Title: Section 43.31, Monthly Report of Revenues, Expenses, and Other Items (Telephone Companies)

Action: Revision

Respondents: Businesses

Estimated Annual Burden: 70

Respondents; 6,720 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-952 Filed 1-11-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-903, et al.; File Nos. BR-4829; et al.]

Calhoun County Broadcasting Co., et al.; Hearing Designation Order

In re applications of:

Jesse R. Williams d.b.a. Calhoun County Broadcasting Co. WJRL, Calhoun City, MS. MM Docket No. 84-903, File Nos. BR-4829, BR-790202YC, BR-820201WM.

For renewal of license Jesse R. Williams tr/as Tippah Broadcasting Co., WCSA, Ripley, MS; Has: 1260 kHz, 500 W, ND-D. MM Docket No. 84-904, File Nos. BR-4402, BR-790202YE, BR-820201XV.

For renewal of license Kerry W. Hill, Ripley, MS; Req: 1260 kHz, 500 W, ND-D. MM Docket No. 84-905, File No. BP-790531AF.

For a construction permit Jesse R. Williams, Calhoun City, MS; Req: 102.3 MHz, Channel 272, 3 kW (H & V), 300 feet. File No. BPH-10437.

Jesse R. Williams, tr/as Calhoun County Broadcasting Co. (Assignor) and Roger H. and Ramona J. Miller (Assignee); For consent to the assignment of license of Station WJRL, Calhoun City, MS. File No. BAL-840227ER.

Memorandum Opinion and Order

Adopted: September 26, 1984.

Released: January 3, 1985.

By the Commission.

1. The Commission has before it for consideration: (1) The license renewal application of Jesse R. Williams d/b as Calhoun County Broadcasting Company for AM radio station WJRL, Calhoun City, Mississippi; (2) the license renewal application of Jesse R. Williams tr/as

Tippah Broadcasting Company for AM radio station WCSA, Ripley, Mississippi; (3) the mutually exclusive application of Kerry W. Hill for a construction permit for a radio station specifying WCSA's frequency and facilities; ¹ (4) an application filed by Jesse R. Williams for a construction permit for FM Channel 272; and (5) an application for consent to the assignment of the license of WJRL, Calhoun City, Mississippi, from Calhoun County Broadcasting Company to Roger H. and Ramona J. Miller. Also before us is a petition to deny the construction permit for FM Channel 272 at Calhoun City, Mississippi filed on June 15, 1983 by S. Gale Denley and other related pleadings.

Background

2. Each of the applications outlined above, with the exception of the mutually exclusive application filed by Kerry Hill, has been filed by or has had as a party to the application, Jesse R. Williams, Collierville, Tennessee. Commission action on these applications has been deferred due to unresolved character issues involving Williams. In 1974, Jesse R. Williams (tr/as Tippah Broadcasting Co.) was an applicant for a new FM station at Ripley, Mississippi. His application was mutually exclusive with another application seeking the same channel filed by Country-Politan Broadcasting, owned by Kerry Hill, and the two applications were designated for a comparative hearing (Docket Nos. 20343-4) pursuant to an Order released on February 10, 1975. On March 5, 1975, Hill filed a petition to enlarge issues. In *Country-Politan Broadcasting, Inc.*, 54 FCC 2d 61, 64 (Rev. Bd. 1975) misrepresentation, fraudulent billing, and discriminatory programming issues were added against Williams.

3. In addition, still pending and unresolved, are the additional issues sought and obtained by the then Broadcast Bureau in a petition to enlarge issues against Williams for publishing an incorrect set of hearing issues falsely suggesting that the Commission had accused Williams' competitor of concealing financial information and of seeking a broadcast license solely to enhance its political interests. The review board also noted that such a use of the Commission's publication requirement to convey inaccurate and misleading information

¹ The mutually exclusive application filed by Kerry W. Hill is seeking the same facilities as the authorized station but at a site approximately 0.1 mile away.

raised substantial questions as to whether the licensee misused and thus abused the Commission's procedures. *Country-Politan Broadcasting, Inc.*, 57 FCC 2d 92 (Rev. Bd. 1975). Before the issues could be tried, the two applicants reached an agreement pursuant to which Williams sought to withdraw his application. Subsequently, Williams' application was dismissed with prejudice and Country-Politan's application was granted. *Country-Politan Broadcasting, Inc.*, 60 FCC 2d 361 (Rev. Bd. 1976), *review denied*, 68 FCC 2d 640 (1978). Consequently, however, the character issues against Williams have since remained unresolved resulting in the deferral of the license renewal applications of stations WJRL, Calhoun City, Mississippi and WCSA, Ripley, Mississippi.

The Kerry W. Hill (Hill) Application

4. Also pending is the mutually exclusive application of Hill for a construction permit for a radio station specifying WCSA's frequency and facilities.

5. The Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by the Hill application. Accordingly, an appropriate issue will be specified.

6. As part of an amendment submitted on August 16, 1979, Hill submitted a substitute bank letter from the Peoples Bank, Ripley, Mississippi for a loan totaling \$75,000. This letter was to be a substitute for the one originally submitted with the application. The amendment also stated that a "current balance sheet will be provided within 15 days." Such balance sheet was not received by the Commission. Consequently, we are unable to determine whether Hill has sufficient funds to construct and operate his station as proposed. An appropriate issue will be specified.

7. Applicants for new broadcast stations are required to give local notice of the filing of their applications in accordance with Section 73.3580 of the Commission's Rules. They must then file proof of such notice or certify that they have or will comply with the public notice requirements. We have no evidence, however, that Hill has done either. If he has not already done so, Hill will be required to give local public notice and to file a statement that he has complied with the local public notice requirement with the presiding Administrative Law Judge within 30 days of the release of this Order.

Character Issues

8. The character issues outlined above that have been added against Williams are many years old. The time span, encompassing the alleged violations reflective of the applicant's character and the supporting affidavits attesting to such allegations, ranges from 1970 to 1975. Thus, some of the allegations are nearing ten years of age and some are well over the ten year mark. Nevertheless, due to the gravity of these pending issues, it has been determined that a single consolidated hearing must be held to resolve these matters. The renewal application of WJRL will be designated to specify the character issues outstanding against Williams. The renewal application of WCSA and the competing application of Kerry Hill for WCSA's frequency and facilities will be designated to include consideration of the character allegations, as well as the outlined comparative issues.

Allocation of Evidentiary Burdens

9. With respect to issues 1 through 5, *infra*, we will allocate the burden of proceeding with the introduction of evidence and the burden of proof on the party requesting the issues.² Although allocation of the two burdens in this manner represents somewhat of a departure from prior precedent, it is consistent with the Act and our general policy. For the reasons stated below we believe such treatment to be appropriate in this case.

10. Where, as here, issues are raised by a petition to deny or a petition to enlarge the issues, it is abundantly clear that Section 309(e) of the Communications Act of 1934, as amended, gives the Commission the discretion to place the burden of proceeding with the introduction of evidence and/or burden of proof on the applicant or on another party.³ In *D&E Broadcasting, Co.*, 1 FCC 2d 78, 80 (1965),⁴ we outlined a general policy for

allocating evidentiary burdens pursuant to our discretionary authority under Section 309(e).

Generally speaking, when hearing issues involving serious misconduct are designated as a result of a petition to deny or a petition to enlarge issues, the burden of proceeding with the introduction of evidence and the burden of proof will be placed upon the party making the charges. We recognize that there may be cases in which the departure from this general practice may be justified. In such cases, the Commission will explain the reasons for placing the burden upon the applicant in the order of designation.

The first application of this policy came in *Fidelity Radio, Inc.*, 1 FCC 1145, 1147-1148 (Rev. Bd. 1965), where a petitioner making a misappropriation of corporate funds allegation was allocated both evidentiary burdens with respect to the issue designated.

11. Subsequent to *Fidelity*, exceptions have been made to the general policy set forth in *D&E* that petitioners will carry both burdens where serious misconduct issues are raised. In particular, where evidentiary information associated with such issues raised in a petition have been deemed to be "peculiarly within the knowledge of the applicant," the burden of proceeding has been placed on the petitioner and the burden of proof on the applicant. *E.g.*, *Midwest Radio-Television, Inc.*, 18 FCC 2d 1011-1013 (Rev. Bd. 1969); *Edgefield-Saluda Radio Co.*, 5 FCC 2d 148, 153 (Rev. Bd. 1966). On the other hand, in cases where a petitioner has merely brought forth deficiencies in an application, the applicant has been required to carry both evidentiary burdens. *Rust Communications Group, Inc.*, 36 RR 2d 244, 248-249 (Rev. Bd. 1976); *Zenith Radio Corp.*, 56 FCC 2d 1095, 1097 (Rev. Bd. 1975); *Radio Marion, Inc.*, 53 FCC 2d 630, 632 (Rev. Bd. 1975).

12. However, unlike the situation in cases like *Midwest Radio* and *Edgefield-Saluda*, here an applicant is faced with defending allegations of misconduct dating back in time approximately 10 to 15 years. We are concerned that such a substantial period of time might make it inherently difficult to obtain witnesses and/or documentation to defend against the issues raised. Given these potential problems, the serious nature of the allegations involved, and our desire to guard against a repeat of the problem in *D&E* which gave rise to our general policy,⁵ we believe it would be inequitable in this case to apply the allocation procedures noted in paragraph 11, above. In announcing our

² The burden of proof on issue 6, *infra*, shall be on Jesse R. Williams tr/as Tippah Broadcasting Company.

³ The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burden shall be as determined by the Commission. 47 U.S.C. 309(e).

⁴ On review of the D&E Review Board decision, we reversed that portion of the Board's order which assessed a comparative demerit against the competing applicant on an illegal importation issue. The Board had held "that even though it could not find affirmatively that Centeno smuggled horses, the applicant had nonetheless failed to carry its burden of proof and had not resolved all doubts about the illegal importation question." We held that the better policy would have been to place both burdens on the Bureau. *Id.* at 79-80.

⁵ See footnote 2 above.

general policy in *D&E, supra*, at 80, we stated that it was "more in accord with concepts of basic fairness to require the party making [serious] charges to prove its truth." This approach is most compelling where, as here, the age of the allegations is substantial. Thus, in accord with our statutory discretion under § 309(e) and our general *D&E* policy, we will allocate both evidentiary burdens on the party requesting the issues.⁶

The WJRL Assignment Application

13. Also pending is an application for the voluntary assignment of license for WJRL, Calhoun City, Mississippi, from Calhoun County Broadcasting Company to Roger and Ramona J. Miller filed on February 27, 1984. A grant of this application has also been deferred due to the unresolved character issues lodged against Williams. A review of that application indicates that the Millers are legally, financially and otherwise qualified. However, the Commission's basic policy with regard to applications for change in ownership of a license which has been designated for hearing that "resolution of outstanding questions concerning the qualifications of licensee-transferors * * * [is] a condition precedent to consideration of a transfer application," *G.A. Richards et al.*, 14 FCC 429, 430 (1950), so that licensees can be "held accountable for their stewardship and will not be allowed to evade the consequence of their misconduct or abuse of a license by selling the station at the end of the license period." *1400 Corp. (KBMI) et al.*, 4 FCC 2d 715, 716 (1966). Thus, the substantial and material questions of fact which exist concerning the qualifications of the current licensee of WJRL must be resolved before any assignment of license may be considered. Accordingly, consideration of the assignment application must be deferred pending the outcome of the hearing designated herein. If, as a result of that hearing the license renewal application of Calhoun County Broadcasting Company is granted, the assignment application will be considered thereafter.

The Application for Construction Permit for FM Channel 272

14. Commission action has also been deferred since 1977 on an application

⁶ We are aware that a different allocation procedure was used in *Western North Carolina Broadcasters*, 6 FCC 2d 126 (1967), a case closely analogous to the instant proceeding. However, in those limited number of cases where age of serious allegations is a critical factor, we now believe that basic fairness concepts are better served if petitioners are assigned both evidentiary burdens.

filed by Jesse R. Williams for a construction permit for FM Channel 272. On May 6, 1983, an application for the voluntary assignment of license of WJRL from Calhoun County Broadcasting Company to Kerry Hill was filed.⁷ Included in the WJRL assignment application was a statement that *upon grant*, the construction permit for FM Channel 272 for Calhoun City, Mississippi would also be assigned to Kerry Hill. A petition to deny was filed by S. Gale Denley on June 15, 1983 protesting the grant of the FM construction permit application for the sole purpose of having it assigned. Pursuant to a letter dated November 15, 1983, Williams wrote to the Commission seeking advice about what to do regarding the FM construction permit application since the Commission to date had not taken action on it. The staff responded on December 16, 1983, and informed Williams that according to the opposition pleading filed by his legal counsel against the pending petition to deny the construction permit, it was understood that it was Williams' intent to immediately assign the construction permit application in the event that it was granted.

15. It is a well settled tenet of Commission policy that construction permits are granted only to qualified applicants who have a bona fide intention to construct the facilities they propose and to render a broadcast service. *Northeast TV Cablevision Corps.*, 21 FCC 2d 442, 443 (1970); *Radio Longview, Inc.*, 19 FCC 2d 966, 967 (1969); and *Assignment and Transfer of Construction Permits*, 16 FCC 2d 789 (1969). See also Section 73.3597 of the Rules and Regulations. The Commission will not grant a construction permit application to an applicant who has previously agreed to assign the permit and thus has no intention to construct and operate as proposed. *Scott & Davis Enterprises, Inc.*, FCC 83-442, released September 27, 1983.

16. In a letter to the Commission staff on January 6, 1984, Williams reaffirmed his intention to assign the pending construction permit application. In light of Williams' stated intent to assign the permit, the Commission's above-outlined policy acts as a bar to the grant of the pending application. Accordingly, Williams' application for a construction permit for FM Channel 272 will be dismissed with prejudice. Also, the

⁷ Pursuant to a request made by the assignor on November 1, 1983, the WJRL assignment application filed on May 6, 1983 was dismissed. Another assignment application to assign the license of WCSA was filed on May 6, 1983. That application was also dismissed pursuant to a request of the assignor received by the staff on December 9, 1983.

petition to deny filed by S. Gale Denley will, therefore, be dismissed as moot.

17. Except as indicated by the issues specified below, the applicants, Jesse R. Williams tr/as Tippah Broadcasting Company and Kerry W. Hill, are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on issues specified below. Additionally, the renewal applications of Jesse R. Williams d/b as Calhoun County Broadcasting Company and Jesse R. Williams tr/as Tippah Broadcasting Company are also designated for hearing on the character issues specified below.

18. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Jesse R. Williams, tr/as Tippah Broadcasting Company misrepresented facts to the Commission in connection with the conduct of its community ascertainment survey.
2. To determine whether Jesse R. Williams, tr/as Tippah Broadcasting Company attempted to fraudulently bill advertising customers of Station WCSA.
3. To determine whether the programming practices of Jesse R. Williams, tr/as Tippah Broadcasting Company have been discriminatory towards the black minority within the service area of Station WCSA.
4. To determine the accuracy of a publication of a notice of hearing by Tippah Broadcasting Company in the Southern Sentinel, including the facts and circumstances relating to the nature and extent of participation, if any, of the principals or agents of Tippah in such publication.

5. To determine in light of the evidence adduced under the above issue:

(a) Whether Tippah Broadcasting Company has complied with Section 73.3594 of the Commission's Rules;

(b) Whether Tippah Broadcasting Company has engaged in an abuse of Commission processes.

6. To determine, in light of the evidence adduced pursuant to issues (1) through (5), above, whether Jesse R. Williams, tr/as Tippah Broadcasting Company, has the requisite qualifications to remain a Commission licensee.

7. To determine whether there is a reasonable possibility that a hazard to

air navigation would occur as a result of the heights and locations of the antenna towers proposed by Kerry Hill.

8. To determine with respect to the application of Kerry Hill:

(a) Whether the applicant has available sufficient funds to construct and operate as proposed; and

(b) Whether, in light of the evidence adduced pursuant to (a) the applicant is financially qualified.

9. In the event it is determined that Jesse R. Williams tr/as Tippah Broadcasting Company possesses the requisite qualifications to remain a Commission licensee, to determine which of the proposals would, on a comparative basis, better serve the public interest.

10. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

11. To determine, in light of the evidence adduced pursuant to issues (1) through (6), above, whether the renewal application of Jesse R. Williams d/b as Calhoun County Broadcasting Company should be granted.

19. It is further ordered, that the Federal Aviation Administration is made a party to these proceedings.

20. It is further ordered, that, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof as to issues (1), (2) and (3) shall be on Kerry Hill; with respect to issues (4) and (5) the burden of proceeding with the introduction of evidence and the burden of proof shall be on the Mass Media Bureau.

21. It is further ordered, That Kerry Hill comply with the local notice provision of § 73.3580 of the Commission's Rules, as discussed above, and advise the presiding Administrative Law Judge as to compliance within 30 days of the release of this Order.

22. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in the above proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St. NW., Washington, D.C. 20554.

23. It is further ordered, that to avoid themselves of the opportunity to be heard, the applicants in the above proceeding shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the

Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

24. It is further ordered, that the applicants in the above proceeding shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

25. It is further ordered, that the application filed by Jesse R. Williams for a construction permit for FM Channel 272 is dismissed with prejudice.

26. It is further ordered, that the petition to deny filed by S. Gale Denley against the application filed by Jesse R. Williams for a construction permit for FM Channel 272 is dismissed as moot.

27. It is further ordered, that the Secretary of the Commission, shall send, by Certified Mail—Return Receipt Requested, a copy of this Memorandum Opinion and Order to each of the parties to this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-951 Filed 1-11-85; 8:45 am]

BILLING CODE 4712-01-M

National Industry Advisory Committee, Common Carrier Communications Subcommittee; Meeting

Pursuant to the provisions of Pub. L. 92-463, notice is hereby given of a closed meeting of the Common Carrier Communications Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, January 29, 1985. This meeting is closed to the public under authority of Section 10(d) of the Federal Advisory Committee Act [Pub. L. 92-463, as amended]. The Subcommittee will meet at 9:30 a.m. at AT&T Communications, 1120-20th Street, NW., Washington, D.C. 20036, North Tower.

Purpose: Classified briefing concerning satellite communications matters.

Agenda: As follows:

1. Opening remarks by Chairman.
2. Briefing and discussion.
3. Adjournment.

For more information about the meeting the NIAC Executive Secretary in the FCC Emergency Communications

Division may be contacted at (202) 634-1549.

William J. Tricarico,
Secretary, Federal Communications
Commission.

[FR Doc. 85-951 Filed 1-11-85; 8:45 am]

BILLING CODE 4712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection packages for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Write-Your-Own (WYO) Program.

Type: New.

Abstract: Under the Write-Your-Own (WYO) Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO Companies issued under the WYO arrangement. In order to maintain adequate financial control over Federal funds, the NFIP requires each WYO Company to submit a monthly financial report.

Type of Respondents: Businesses or Other For-Profit.

Number of Respondents: 40.

Burden Hours: 240.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: January 7, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-954 Filed 1-11-85; 8:45 am]

BILLING CODE 4712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202-000014-057.

Title: Trans Pacific Freight Conference (Hong Kong).

Parties: American President Lines, Ltd.

Barber Blue Sea Line
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would add a new article listing the name and principal office of each member line and would add Hapag-Lloyd AG as a party to the agreement. The parties have requested a shortened review period and have submitted a petition for waiver of the Commission's regulations pertaining to the form and organization of agreements filed with the Commission.

Agreement No: 217-010712.

Title: EAC Lines TPS, LTD./Thai Maritime Navigation Space Charter Agreement.

Parties: The East Asiatic Company Ltd. A/S d/b/a EAC Lines Trans Pacific Service Ltd. (EAC).

Thai Maritime Navigation Co. (TMN)

Synopsis: the proposed agreement would permit TMN to charter space aboard EAC vessels in the trade from United States West Coast ports and inland points via such ports to ports in Thailand for the carriage of cargo moving under TMN intermodal bills of lading.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,
Assistant Secretary.

Dated: January 9, 1985.

[FR Doc. 85-1003 Filed 1-11-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 527.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202-010714.

Title: Trans-Atlantic American Flag Liner Operations.

Parties:

Farrell Lines Incorporated
Sea-Land Service, Inc.
United States Lines, Inc.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed agreement would establish a conference of U.S. flag liner operators for the carriage of household goods, personal effects and unaccompanied baggage moving under U.S. international through government bills of lading in the trade between U.S. ports and inland points, except Alaska and World ports, except ports in the Far East West of 130 degrees West Longitude and East of 90 degrees East Longitude. The proposed agreement would also provide for slot chartering among the members.

By Order of the Federal Maritime Commission.

Dated: January 9, 1985.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 85-1004 Filed 1-11-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal

Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-043.

Title: United States Atlantic and Gulf/Venezuela Freight Association.

Parties:

Compania Anonima Venezolana De Navegacion
Delta Steamship Lines, Inc.
Coordinated Caribbean Transport, Inc.

Synopsis: The proposed amendment would permit United States Lines (S.A.) Inc. to become a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 203-007970-005.

Title: Pacific Coast Committee of Inward Trans-Pacific Steamship Lines.

Parties:

Barber Blue Sea Line
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to conform with the format requirements of the Commission's regulations and would make certain administrative changes.

By order of the Federal Maritime Commission.

Dated: January 9, 1985.

Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 85-1005 Filed 1-11-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Atlantic Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under section 225.23 (a)(2) or (f), of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 1, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Atlantic Bancorporation*, Jacksonville, Florida; to acquire Florida Title & Mortgage Company, Jacksonville, Florida, thereby engaging in the activities of originating and servicing conventional and federally insured residential mortgage loans and the marketing and sale of such residential mortgage loans to federal and private institutional purchasers in the established secondary market.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp of Monticello, Inc.*, Monticello, Illinois; to acquire Eskridge Agency, Inc., Hammond, Illinois, thereby engaging in the general brokering of all lines of insurance coverage from offices in two towns which have populations not exceeding 5,000. These activities would be performed in the towns of Monticello and Hammond and the surrounding areas.

2. *How-Win Development Co.*, Cresco, Iowa; to acquire Cresco Insurance Agency, Inc., Cresco, Iowa, thereby

engaging in general insurance and bonding activities in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, January 8, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-943 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Bankmanagers Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. § 1842) and section 225.14 of the Board's Regulation Y (12 C.F.R. 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 4, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bankmanagers Corp.*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Park Bank East, Milwaukee, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Johnco Bancshares, Inc.*, Whitehall, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of John O. Melby & Co. Bank, Whitehall, Wisconsin.

Board of Governors of the Federal Reserve System, January 8, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-944 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Bankvermont Corporation, et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 31, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank Vermont Corporation*, Burlington, Vermont; to acquire 100 percent of the voting shares of Oxford Bank and Trust, Oxford, Maine.

B. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Midlantic Banks Inc.*, Edison, New Jersey; to merge with Heritage Bancorporation, Jamesburg, New Jersey, thereby indirectly acquiring Heritage Bank, N.A., Jamesburg, New Jersey.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Minooka Bancorp, Inc.*, Minooka, Illinois; to become a bank holding company by acquiring 83.98 percent of

the voting shares of Tri-County Bank of Minooka, Minooka, Illinois.

2. *Westbanco, Inc.*, Westville, Illinois; to acquire 45 percent of the voting shares of Minooka Bancorp, Inc., Minooka, Illinois, thereby indirectly acquiring Tri-County Bank of Minooka, Minooka, Illinois.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National City Bancshares, Inc.*, Evansville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger with an interim bank, The National City Bank of Evansville, Evansville, Indiana.

Board of Governors of the Federal Reserve System, January 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-94 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Citizens Financial Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 84-33828), published at page 50783 of the issue for Monday, December 31, 1984.

Citizens Financial Group, Inc., Providence, Rhode Island, will indirectly acquire The Money Store/Georgia, Inc., Atlanta, Georgia, formerly MARLA, Inc., Atlanta, Georgia.

Board of Governors of the Federal Reserve System, January 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-941 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Compagnie Financiere de Suez and Banque Indosuez; Application To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 USC § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely

related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Compagnie Financiere de Suez and Banque Indosuez*, both located in Paris, France; to engage *de novo* through their subsidiary, Indosuez Investment Management Services, Menlo Park, California, in acting as an advisory company for mortgage and real estate investment trusts; serving as an investment advisor, as defined in section 2(A)(20) of the Investment Company Act of 1940, to investment companies registered under such act; providing portfolio investment advice to other persons; furnishing general economic information and advice, general economic and statistical forecasting services and industry studies; providing financial advice to State and local governments, such as with respect to the issuance of their securities; and conducting such incidental activities as are necessary to carry out the activities specified above.

Board of Governors of the Federal Reserve System, January 8, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-945 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc.; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through national bank subsidiaries in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiaries will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the Board will not act on the applications unless and until a preliminary charter for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than January 31, 1985.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Rosemont, Pennsylvania; to engage *de novo* through its subsidiary, Fidelity Bank (Florida), N.A., Fort Lauderdale, Florida; in consumer credit, mortgage lending, trust services, investment advisory services, deposit-taking (including time and demand deposits) and permissible brokerage services. These activities will be conducted in the Fort Lauderdale, Hollywood, Pompano Beach SMSA, Florida areas.

2. *Fidelcor, Inc.*, Rosemont, Pennsylvania; to engage *de novo* through its subsidiary, Fidelity Bank (New Jersey), N.A., Cherry Hill, New Jersey; in consumer credit, mortgage lending, trust services, investment advisory services, deposit-taking (including time and demand deposits) and permissible brokerage services. These activities will be conducted in the New Jersey portion of the Philadelphia-Camden SMSA area.

Board of Governors of the Federal Reserve System, January 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-942 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through national bank subsidiaries in the making of commercial loans, and other activities specified below. The proposed subsidiaries will not engage in demand deposit transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the Board will not act on the applications unless and until a preliminary charter for each proposed

national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than January 20, 1985.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through the following national bank subsidiaries in making, acquiring and servicing commercial and consumer loans for its own account, and for the account of others, as well as making available deposit services (excluding demand deposits): Security Pacific National Bank of Arizona, Phoenix, Arizona; Security Pacific National Bank of Colorado, Denver, Colorado; Security Pacific National Bank of Connecticut, East Hartford, Connecticut; Security Pacific National Bank of Florida, Orlando, Florida; Security Pacific National Bank of Georgia, Atlanta, Georgia; Security Pacific National Bank of Hawaii, Honolulu, Hawaii; Security Pacific National Bank of Illinois, Schaumburg, Illinois; Security Pacific National Bank of Massachusetts, Natick, Massachusetts; Security Pacific National Bank of Minnesota, Burnsville, Minnesota; Security Pacific National Bank of Nevada, Las Vegas, Nevada; Security Pacific National Bank of New Mexico, Albuquerque, New Mexico; Security Pacific National Bank of New York, White Plains, New York; Security

Pacific National Bank of North Carolina, Charlotte, North Carolina; Security Pacific National Bank of Oregon, Portland, Oregon; Security Pacific National Bank of Pennsylvania, King of Prussia, Pennsylvania; Security Pacific National Bank of Texas (Dallas), Dallas, Texas; Security Pacific National Bank of Texas (Houston), Houston, Texas; Security Pacific National Bank of Utah, Salt Lake City, Utah; Security Pacific National Bank of Virginia, McLean, Virginia; Security Pacific National Bank of Washington, Bellevue, Washington.

Board of Governors of the Federal Reserve System, January 8, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-946 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

Maryland National Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 84-16264), published at page 25041 of the issue for Tuesday, June 19, 1984.

Maryland National Corp., Baltimore, Maryland; to engage *de novo* through its proposed national bank subsidiary, Maryland National Bank/D.C., Washington, D.C., in consumer lending and deposit taking activities. In addition, Bank proposes to engage through Bank in the following nonbanking services permissible under § 225.25 of Regulation Y (12 CFR 225.25): the sale of travelers checks, U.S. savings bonds, and money orders; certified and cashiers checks; personal credit cards; discount brokerage accounts; investment advisory and trust services. Bank also proposes to engage in consumer financial planning and counseling, an activity that the Board has found to be closely related to banking (*Citicorp* (Citicorp Person-to-Person Financial Centers), 65 Federal Reserve Bulletin 265 (1979)), and an activity the Board has proposed to add to its list of permissible nonbanking activities under § 225.25 of Regulation Y (49 FR 9215 (1984)). Comments on this application must be in writing, and must be received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 not later than January 28, 1985.

Board of Governors of the Federal Reserve System, January 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-1084 Filed 1-11-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****Advisory Committee Meeting; Amendment of Notice**

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is amending an advisory committee notice to clarify those portions of the Vaccines and Related Biological Products Advisory Committee meeting which are open to the public. The announcement of the Vaccines and Related Biological Products Committee meeting, which was published in the *Federal Register* of December 20, 1984 (49 FR 49514), is revised to read as follows:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 24 and 25, 9 a.m., Bldg. 29, Rm. 121, 8900 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 24, 9 a.m. to 10 a.m., unless public participation does not last that long; closed committee discussion, 10 a.m. to 2 p.m.; open committee discussion 2 p.m. to 4:30 p.m.; open committee discussion, January 25, 8:30 a.m. to 3 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will continue its discussion of the intramural research program in the Office of Biologics Research and Review on January 24. The committee will discuss influenza vaccine formulation for the 1985-86 season on January 25.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to a pending license application. This portion of the meeting will be closed to permit discussion of

this information (5 U.S.C. 552b(c)(4)).

Dated: January 7, 1985.

Mark Novitch.

Acting Commissioner of Food and Drugs.

[FR Doc. 85-958 Filed 1-11-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration**Application Announcement for Nurse Anesthetist Traineeship Grants**

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Nurse Anesthetist Traineeship Grants are being accepted for Fiscal Year 1985 under the authority of Section 831 of the Public Health Service Act, which was established by Pub. L. 96-76 and extended by Section 8(1) of the Orphan Drug Act of 1983, (Pub. L. 97-414). Authorization for the current fiscal year is continued by the Department of Labor, Health and Human Services and Education and Related Agencies Appropriation Act, 1985, Pub. L. 98-619, enacted on November 8, 1984.

Section 831 of the Public Health Service Act, 42 U.S.C. 297-1(a)(1), authorizes grants for traineeships to prepare licensed, registered nurses to be nurse anesthetists in eligible nurse anesthetist programs.

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides full-time registered nurses with nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools and must currently have full-time students who are registered nurses who are beyond the 12th month of study.

The application deadline date is February 22, 1985. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline date and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Approximately \$792,000 is expected to be available in Fiscal Year 1985 for awards under Section 831.

In determining the amount of the grant award, the Department will use a

formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

For specific guidelines and information regarding the program aspects, contact:

Division of Nursing,
Bureau of Health Professions,
Health Resources and Services
Administration,
Parklawn Building, Room 5C-26,
5600 Fishers Lane,
Rockville, Maryland 20857,
Telephone: (301) 443-6333

Questions regarding grants policy should be directed to:
Grants Management Officer (A22),
Bureau of Health Professions,
Health Resources and Services
Administration,
Parklawn Building, Room 8C-22,
5600 Fishers Lane,
Rockville, Maryland 20857,
Telephone: (301) 443-6915

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 42 CFR Part 100.

Dated: January 7, 1985.
Robert Graham, M.D.,
Administrator, Assistant Surgeon General.
[FR Doc. 85-956 Filed 1-11-85; 8:45 am]
BILLING CODE 4160-16-M

Advisory Committee; Establishment of Organ Transplantation Task Force

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I), the Health Resources and Services Administration announces the establishment by the Secretary, HHS, of the Task Force on Organ Transplantation on December 21, 1985, pursuant to Pub. L. 98-507, the National Organ Transplant Act.

Designation: Task Force on Organ Transplantation.

Purpose: The Task Force on Organ Transplantation conducts comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation, prepares the assessment and advises the Secretary with respect to the development of regulations for grants under section 371 of the Public Health Service Act.

The Task Force makes an assessment of immunosuppressive medications used to prevent organ rejection in transplant

patients, including an analysis of the safety, effectiveness, and cost (including cost savings from improved success rates of transplantation) of different modalities of treatment; an analysis of the extent of insurance reimbursement of long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector; an identification of problems that patients encounter in obtaining immunosuppressive medications; and an analysis of the comparative advantages of grants, coverage under existing Federal programs, or other means to assure that individuals who need such medications can obtain them.

Authority for this Task Force will expire no later than three months after the date on which the Task Force transmits the report required by section 104(c).

Jackie Baum,
Advisory Committee Management, Officer,
HRSA.

[FR Doc. 85-789 Filed 1-11-85; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wilderness Inventory and Study Decision; Butte District, MT

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Wilderness Study Decision, Centennial Mountains Instant Study Area, Butte, Montana BLM District, and contiguous roadless areas in the Targhee National Forest, St. Anthony, Idaho and the Beaverhead National Forest, Dillon, Montana.

SUMMARY: The Montana Bureau of Land Management (BLM), the Beaverhead and Targhee National Forests have completed an intensive inventory to determine if wilderness characteristics are present in the Centennial Mountains Instant Study Area and adjacent Forest Service roadless areas. A proposed wilderness study decision was announced in the July 12, 1982 Federal Register and was followed by a 30-day comment period which ended in mid-August.

During the comment period, 70 comments were received concerning the wilderness characteristics of the Centennial Mountains. Forty-two responses favored wilderness designation and/or continuation of the study. Sixteen responses opposed the study and/or wilderness designation and 12 did not indicate position.

Decision: The area to be studied for wilderness designation includes 21,774 acres of the current Centennial Mountains Primitive Area, 4,260 acres of contiguous public land (BLM), 4,600 acres of the Beaverhead National Forest, Montana and 42,252 acres of the Targhee National Forest, Idaho. Public input identified several other areas on the Targhee National Forest which did not meet wilderness characteristics and were excluded from further study. These exclusions total a little over 212 acres. Further exclusion on BLM lands is 1/2 of an acre for a small extension of the Bean Creek road. Exclusions on the Targhee National Forest include 73 acres for the Little Creek timber sale, 75 acres for the Coal Mine timber sale, 8 acres for the Taylor Creek mine shaft and road, 15 acres for the Tincup Creek State mine and road, and 41 acres for the Ching Creek and Ching Moose timber sales. The Federal Register Notice of July 12, 1982 proposed that 7,194 acres be dropped from further wilderness study. With the further subtraction of the 212 acres mentioned above, the combined area of the remaining study area is 72,674 acres.

The Centennial Mountains wilderness study area as identified above will be further studied for potential inclusion in the National Wilderness Preservation System using the procedures outlined in the document entitled, "Procedures for Wilderness Review of Primitive and Natural Areas Formally Identified by the BLM Prior to November 1, 1975" dated May 1979. A joint environmental impact statement involving the Bureau of Land Management, Butte, Montana, the Targhee National Forest, and the Beaverhead National Forest will be completed for the area and submitted to the Secretary of Interior for transmission to Congress by January 1, 1983.

DATES: This study decision will become final on or before January 15, 1985 unless an amended decision is published as a result of new information received during the final 30 day protest period.

Public Participation: Maps and narrative information pertinent to this decision are available for public inspection at the following locations:

Butte BLM District Office, 106 North Parkmont, Butte, Montana 59702-3388
Targhee National Forest, P.O. Box 208, St. Anthony, Idaho 83445
Beaverhead National Forest, Dillon, Montana 59725

FOR FURTHER INFORMATION CONTACT: Project Manager, Centennial Mountains, Wilderness Study/EIS, (406) 494-5059.

Dated: December 20, 1984.

Jack McIntosh,
District Manager.

[FR Doc. 85-818 Filed 1-11-85; 8:45 am]
BILLING CODE 4310-40-M

Bureau of Reclamation

Gallup-Navajo Indian Water Supply Project, New Mexico-Arizona-Utah; Withdrawal of the Draft Environmental Statement

The Bureau of Reclamation published a Notice of Intent to Prepare an Environmental Statement for the Gallup-Navajo Indian Water Supply Project, New Mexico-Arizona-Utah, in the Federal Register, vol. 44, No. 91, dated May 9, 1979. Scoping meetings were held in Gallup, Crownpoint, Shiprock, and Farmington, New Mexico, on November 2 through November 5, 1981, respectively.

The Draft Environmental Statement (DES), Gallup-Navajo Indian Water Supply Project, New Mexico-Arizona-Utah, was filed with the Environmental Protection Agency on January 24, 1984, and the Notice of Availability was published in the Federal Register, vol. 49, No. 19, dated January 27, 1984. Public hearings on the DES were held in Gallup, New Mexico; Windowrock, Arizona; Crownpoint, New Mexico; Shiprock, New Mexico; and Farmington, New Mexico, on April 23 through April 26, 1984.

During the DES hearings, the Navajo Tribal authorities advised Reclamation that the tribe is interested in evaluating a new alternative plan prior to any further commitment to the proposed alternative plan (the Four Corners Plan) as described in the DES.

The new alternative plan presently being considered by the Navajo Tribe would require a complete analysis of new base data, environmental impacts, water requirements, costs, engineering, economics, cultural resources, impacts, and other facets related to project formulation including a new DES. At a minimum, it would require about 2 or 3 years to evaluate this new alternative after being authorized and funded for further study. Therefore, Reclamation is withdrawing the Draft Environmental Statement, Gallup-Navajo Indian Water Supply Project, New Mexico-Arizona-Utah.

If further planning is carried out and a new plan completed, a new DES will be filed and distributed by Reclamation.

Dated: January 8, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-947 Filed 1-11-85; 8:45 am]

BILLING CODE 4310-05-M

[INT-DES 84-68]

Tucson Aqueduct—Phase B, Central Arizona Project, AZ; Public Hearing on Draft Environmental Impact Statement

Correction

This corrects an error in the December 24, 1984, issue of the Federal Register, which stated on page 49950 that public hearings would be held in Tucson, Arizona at 1 p.m. and 7 p.m. on January 20, 1985, in the Tucson Community Center located at 260 South Church Street. This corrects the notice to read that the public hearings to be held in Tucson will be held at 1 p.m. and 7 p.m. on January 29 (not January 20 as originally stated) in the Tucson Community Center at 260 South Church Street.

Dated: January 9, 1985.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 85-1010 Filed 1-11-85; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Availability of Draft Environmental Impact Statement on the Proposed Area D, Expansion of the Rosebud Mine, Rosebud County, MT (Federal Coal Mining Lease No. M-547131)

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of draft environmental impact statement (OSM-EIS-19).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) and the Montana Department of State Lands are making available a jointly prepared draft environmental impact statement (EIS) on the proposed Area D expansion of the Rosebud mine. The EIS has been prepared to assist the Department of the Interior and the Department of State Lands (DSL) in making a decision on the Western Energy Company application to surface mine coal approximately 1 mile northwest of Colstrip, Montana. OSM and DSL are requesting that any interested party submit written comments on the draft EIS to assist with the preparation of the final EIS. If

substantial interest is shown, OSM and DSL may hold a public hearing in the vicinity of the mine during the comment period.

DATES: Comment period: Written comments on the draft EIS must be received by 4 p.m. (Mountain Standard Time), March 4, 1985, at the location listed below, under "ADDRESSES."

Public hearing: Expression of interest for a hearing should be submitted by the public at the location listed below, under "ADDRESSES," by January 18, 1985.

ADDRESSES: Written comments and/or expressions of interest for a public hearing: Hand deliver or mail to the attention of Kit Walther, Environmental Analysis Bureau, Montana Department of State Lands, Capitol Station, Helena, Montana 59620.

Availability of copies: Copies of the draft EIS may be obtained from Allen D. Klein, Administrator, Attn: Charles Albrecht, Office of Surface Mining, Western Technical Center, Second Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202, or from Kit Walther, Environmental Analysis Bureau, Montana Department of State Lands, Capitol Station, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Chief, Environmental Analysis Branch (telephone: 303-844-5656) at the Denver, Colorado, location given under "ADDRESSES."

SUPPLEMENTARY INFORMATION: Western Energy's Rosebud mine is an existing surface mine planned to eventually cover 22,000 acres of land surrounding the town of Colstrip, Montana. Of this total, about 9,000 acres has already been permitted by OSM and DSL. The company is now seeking approval to mine 68.5 million additional tons of coal over an 18-year period at an average rate of approximately 3.8 million tons per year. The proposed expansion would add 3,073 acres to the permit area in sections 13-15, 22-27, and 35, T.2 N., R. 41 E., Montana P.M., of which 2,615 acres would be disturbed.

The EIS analyzes both the 18-year operation proposed for the application area and the company's long-range plans in Area D for the next 23 years. The long-range plans would eventually add another 1,309 acres to the permit area, bringing the permit total of Area D to 4,382 acres and the permit total of the Rosebud mine to approximately 13,382 acres. Five alternatives that treat the available range of decisions are evaluated in the EIS. These include: Approve the application as proposed, reject the application, selectively reject approval, approve mining with special

conditions, and no action. OSM and DSL have identified "approve mining with special conditions" as the preferred alternative.

Dated: January 7, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85-973 Filed 1-11-85; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Decision-Notice OP5MCF-1]

Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. §§ 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved

fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission,
James H. Bayne,
Secretary.

No. MC-F-16003; Blue & White Lines of Arizona, Inc. (B&W Arizona) (4001 South 34th Street Phoenix, AZ 85040)—Purchase—Arizona Bus Sales, Inc. D/B/A Arizona Chapter Enterprises (Arizona) (4001 South 34th Street, Phoenix, AZ 85040).

Filed: November 30, 1984.

Representative: S. Berne Smith, Esq., P.O. Box 1166, Harrisburg, PA 17108.

B&W Arizona, a non-carrier, seeks authority to purchase certificate No. MC-162388 and No. MC-162388 (Sub-No. 1) of Arizona. The operating rights to be purchased authorize the irregular-route transportation of passengers, in charter and special operations, between points in the U.S. Arizona will be controlled by Dennis R. Long through, the transaction. Mr. Long also controls Blue & White Lines, Inc. and Blue & White Lines of Florida, Inc., both of which operate as motor common and contract carriers of passengers in interstate or foreign commerce under authorities issues in No. MC-46614 and subs and No. MC-158455, respectively Blue & White Lines, Inc. and Mr. Long

also have pending a proceeding in MC-F-15925 for authority to acquire control of Lincoln Coach Lines and Lincoln Coach Travel, Inc. through the purchase of issued and outstanding capital stock of the two motor carriers. Lincoln Coach Lines operates as a motor common and contract carrier of passengers over regular and irregular routes in No. MC-120083 and subs and Lincoln Coach Travel, Inc. holds authority under No. MC-157167 (Sub-No. 1) to transport passengers over irregular routes in charter and special operations between points in the U.S.

Note.—(1) An application has been filed for temporary lease of the subject rights. (2) This notice does not purport to be a complete description of the operating rights of the carriers involved.

[FR Doc. 85-1054 Filed 1-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-233)]

Burlington Northern Railroad Co.; Abandonment; in Richland and Dawson Counties, MT; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 45.38-mile rail line between Newlon Jct. (milepost 15.35) and Richey (milepost 60.73) in Richland and Dawson Counties, MT. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-1052 Filed 1-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-235)]

Burlington Northern Railroad Co.; Abandonment in Walla Walla County, WA; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 4.62-mile rail line between College Place (milepost 0.00) and Baker Langdon (milepost 4.63) in Walla Walla County, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-1053 Filed 1-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30173]

Prairie Trunk Railway; Acquisition and Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the acquisition by Prairie Trunk Railway of (1) a 2.47-mile rail line between Springfield and Sangamon Junction, IL, owned by The Baltimore and Ohio Railroad Company (B&O), (2) a 29.87-mile rail line between Sangamon Junction and Boody, IL, operated by B&O and owned by The Cincinnati, Indianapolis and Western Railroad Company (CI&W), a wholly-owned subsidiary of B&O, (3) B&O's interest in trackage rights granted in a 1973 agreement between B&O and Illinois Central Gulf Railroad Company (ICG) over approximately one-half mile of track in Springfield which connects with

the 2.47-mile line described above, and (4) CI&W's interest in trackage rights granted in a 1921 agreement between CI&W and Wabash Railway Company over 9 miles of track between Boody and Decatur, IL, now owned by the Norfolk and Western Railway Company, subject to standard employee protective conditions.

DATES: This exemption will be effective February 13, 1985. Petitions for reconsideration must be filed by February 4, 1985. Petitions for stay must be filed by January 24, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30173 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.
- (2) Petitioner's Representative: Fritz R. Kahn, Suite 1100, 1600 L Street NW., Washington, DC 20036.

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. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: January 2, 1985.

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

James H. Bayne,

Secretary.

[FR Doc. 85-1050 Filed 1-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 122)]

Seaboard System Railroad, Inc.; Abandonment in Alachua County, FL; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 5.61-mile rail line between Gainesville (milepost SR-704.51) and Airbase (milepost SR-698.9) in Alachua County, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following

notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-1051 Filed 1-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-241X)]

Burlington Northern Railroad Co.; abandonment—in Jasper County, Mo; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 7.62-mile line of railroad between milepost 341.87 near Carl Junction and milepost 334.25 near J&G Junction.

Eagle-Picher Industries, Inc. and the Missouri Highway and Transportation Commission filed letters in opposition. Applicant filed a clarification letter dated December 12, 1984.¹

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective [30 days from service of this decision] (unless stayed pending reconsideration). Petitions to say must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] with: Office of the Secretary,

¹ The letter points out that Eagle-Picher is not a shipper on the line. Also, the regulations at 1152.50(d)(1) require only that a notice be served on the State Commissions. It appears that BN supplied the State Commission with a copy of the exemption petition within 2 days of its request.

Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 77 Main Street, Ft. Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: January 10, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-1167 Filed 1-11-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Eukaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Eukaryotic Genetics.

Date and Time: Friday and Saturday, February 1st and 2nd, 1985 from 8:30 a.m. to 5:00 p.m.

Place: Conference Room of Colonial Inn, 910 Prospect Street, La Jolla, California 92037.

Type of Meeting: Closed.

Contact Person: Dr. DeLill Nasser, Program Director, Eukaryotic Genetic, Room 329G Telephone: 202/357-0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 52(c), Government the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Panel Management Officer was delegated the

authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

January 9, 1984.

[FR Doc. 85-1016 Filed 1-11-85; 8:45 am]

BILLING CODE 7555-01-M

Committee of Equal Opportunities in Science and Technology; Meeting; Subcommittee on Minorities in Science and Technology

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Minorities in Science and Technology.

Place: Room 1242-A, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: Wednesday and Thursday, January 30-31, 1985.

Time: Wednesday, 9:00-3:30 p.m.; Thursday, 9:00-12:30.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street NW., Washington, D.C. 20550 Telephone: 202/357-9418.

Purpose of Subcommittee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities in science and technology, and the impact of science and technology on minorities.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to consider mechanisms to increase participation of minorities in Foundation programs, on research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to minority appointments on advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Officer.

January 9, 1985.

[FR Doc. 85-1015 Filed 1-11-85; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology; Subcommittee on Women in Science and Technology

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Women in Science and Technology.

Place: Room 1242-A, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Date: Thursday and Friday, January 31-February 1, 1985.

Time: Thursday, 9:00-5:00 p.m.; Friday, 9:00-Noon.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street, NW, Washington, D.C. 20550 Telephone: 202/357-9418.

Purpose of Subcommittee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for women in science and technology, and the impact of science and technology on women.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to consider mechanisms to increase participation of women in Foundation programs and research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to women appointments on advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Officer.

January 9, 1985.

[FR Doc. 85-1014 Filed 1-11-85; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology; Meeting; Task Group on Disabled Scientists

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group on Disabled Scientists.

Place: Room 1242-A, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: Friday, February 1, 1985.

Time: 1:30-5:00 p.m.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street, NW., Washington, D.C. 20550 Telephone: 202/357-9418.

Purpose of Subcommittee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for handicapped persons in science and technology, and the impact of science and technology on handicapped persons.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to consider mechanisms to increase participation of handicapped persons in Foundation programs, on research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to appointments of handicapped persons in advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Officer.

January 9, 1985.

[FR Doc. 85-1013 Filed 1-11-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-364]

Babcock & Wilcox; Receipt and Availability of Application for Amendment To Materials License No. SNM-414

The U.S. Nuclear Regulatory Commission (The Commission) has received a request dated October 31, 1984 for issuance of an amendment to Materials License No. SNM-414 for operation of a Volume Reduction Services Facility at Babcock & Wilcox's Parks Township, Pennsylvania, site to receive and treat low-level radioactive waste containing byproduct material.

If granted, the amendment would authorize Babcock & Wilcox to operate a high-force compactor and an incinerator in order to reduce the volume of low-level radioactive wastes generated by medical facilities, industries and nuclear power plants. The Volume Reduction Services Facility would be installed in a portion of the Babcock & Wilcox plant formerly used for processing plutonium fuel materials for the nuclear industry. Volume-reduced wastes would be shipped back to the generators or to licensed waste disposal facilities.

In consideration of the request for license amendment, the Commission intends to perform a safety evaluation and an environmental assessment of the proposed activity. Prior to issuance of any amendment, the Commission will have to determine that the application meets the requirements of the Atomic Energy Act of 1954, as amended, and of the Commission's regulations.

The application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local public document room in the Apollo Memorial Library, Apollo, Pennsylvania.

Dated at Silver Spring, Maryland, this 7th day of January 1985.

For the Nuclear Regulatory Commission,

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-1040 Filed 1-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corporation, et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit No. 3 Nuclear Generating Plant located in Citrus County, Florida.

In accordance with the licensee's application dated December 14, 1984, the amendment would modify Technical Specification Tables 4.3.2, 4.3.6, and 4.3.7, and Technical Specification 4.4.3.2.2 to permit waiver of certain 18-month calibration frequency requirements for Cycle V provided the surveillance is performed during Refuel V. The specific equipment covered by this request is as follows:

1. Low Steam Generation Pressure (Steam Line Rupture Matrix).
2. Pressurizer Level (Remote Shutdown).
3. Steam Generator Pressure (Remote Shutdown).
4. Pressurizer Level (Post-Accident).
5. Steam Generator Outlet Pressure (Post-Accident).
6. Startup Feedwater Flow.
7. Power Operated Relief Valve.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in

accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee states that because of the high plant capacity factor for this cycle (85%) and for the year-to-date (90%), it has not had the opportunity to perform all of the specific 18-month surveillances which require plant shutdown. It further states that the end of the most limiting surveillance interval, including the allowable 25 percent extension, is February 14, 1985, that Refuel V is expected to commence on March 9, 1985, and that because the requested time extension of less than one month is small (less than 5%), the proposed amendment is not likely to involve a significant hazards consideration. The Commission's staff agrees with the licensee's evaluation. We further conclude that because of the low probability of significant deviations from proper calibration during the small extension of time, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated or a significant reduction in a margin of safety. Since only calibration of equipment is the subject of the change, it does not create the possibility of a new or different kind of accident.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, ATTN: Docketing and Service Branch.

By February 13, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of an amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide the opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 140042, St. Petersburg, Florida 33733.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Dated at Bethesda, Maryland, this 8th day of January 1985.

For the Nuclear Regulatory Commission,
George W. Rivenbark,
Acting Chief, Operating Reactors Branch No. 4, Division of Licensing.
[FR Doc. 85-1041 Filed 1-11-85; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Braidwood Station; Meeting

The ACRS Subcommittee on Braidwood Station will hold a meeting on January 29, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The meeting will be for the most part open to public attendance. However, a portion of the meeting will be closed to discuss plant security relating to the Braidwood Station.

The agenda for subject meeting shall be as follows:

Tuesday, January 29, 1985, 8:30 a.m. until the conclusion of business

The Subcommittee will continue to review the Commonwealth Edison Company's application for an operating license for the Braidwood Station.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Commonwealth Edison Company, the NRC Staff, their consultants, and other invited persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 9, 1985.

Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 85-1042 Filed 1-11-85; 8:45 am]
BILLING CODE 7590-01-M

PEACE CORPS

Compliance With Privacy Act of 1974

AGENCY: Peace Corps.

ACTION: Notice of Adoption of Systems of Records.

SUMMARY: Notice is hereby given that in accord with 5 U.S.C. 522a(e)(4), Sec. 3 of the Privacy Act of 1974 (hereinafter referred to as the "Act"), Peace Corps is adopting the notice of systems of records as set forth below.

This notice does not include specific identification of Office of Personnel Management (OPM) records in the custody of Peace Corps. OPM has assumed responsibility for publishing government-wide notices pertaining to Federal employee personnel records.

Special note should be taken of the Preliminary Statement to the systems of records. It contains an indication of general routine uses, general procedures as to notification, access and contest, and other information applicable to Peace Corps records systems generally. Peace Corps desires to avoid unnecessary repetition and duplication in the publication of each system of

records which might make it difficult for the public to review and locate a system in which a record might be available. The publication on general routine uses and exemptions does not serve as an indication that each system will be normally used or usable for each such purpose or subject to each such exemption.

EFFECTIVE DATE: February 13, 1985.

FOR FURTHER INFORMATION CONTACT: John von Reyn, Privacy Act Officer, Office of Administrative Services, 202-254-6020 or Robert Martin, Associate General Counsel, 202-254-7966.

SUPPLEMENTARY INFORMATION: On August 27, 1984, the Director of the Peace Corps issued a notice in the *Federal Register*, Volume 49 at pages 33948 through 33962, that the Peace Corps proposed to adopt the notice of systems of records published therein and requested public comment on the notice. No comments were received during the sixty day comment period. Peace Corps is incorporating one change in the notice as published. The Volunteer Applicant and Service Record System is being expanded to include a new information collection tool used for suitability assessment for candidates for Peace Corps service. This information collection increases the type of information maintained, but does not change the number of individuals covered by the system, alter the manner in which the records are indexed or retrieved, or alter the use or intended use of the information in the system.

Effective December 29, 1981, the Peace Corps became an independent agency. Prior to that date, it was an autonomous part of the ACTION agency, and was covered by ACTION's Privacy Act regulations (45 CFR part 1224). Because of its independent status Peace Corps is now adopting the notice of Systems of Records and Routine Uses listed below.

This notice is issued in Washington, D.C., on January 9, 1985.

Loret Miller Ruppe,
Director, Peace Corps.

Peace Corps is adopting the following notice of systems of records:

Notice of Systems of Records Preliminary Statement

The term "Agency" when used in this notice refers to the Peace Corps.

Operating Units—The names of the operating units within the Agency to which a particular system of records pertains are listed under the system manager and address section of each system notice.

Official Personnel Files—Official personnel files of Federal employees in the General Schedule in the custody of

the Agency are considered the property of the Office of Personnel Management (OPM). Access to such files shall be in accordance with such notices as are published by OPM. Access to such files in the custody of the Agency will be granted to individuals to whom such files pertain upon request to the Director, Office of Personnel Management, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

Files of employees serving under Peace Corps appointing authorities, i.e., Foreign Service and Expert/consultant, which are not specifically covered by the OPM publication, are inter-filed with all other personnel files and treated in the same manner. The OPM publication of notice for official personnel files is therefore adopted by reference for Peace Corps personnel files in the custody of the Agency provided however that access, contests and appeals as to any such record shall be processed as provided in Peace Corps regulations under the Privacy Act.

Various offices in the Agency maintain files which contain miscellaneous copies of personnel material affecting Peace Corps employees. This would include copies of standard personnel forms, evaluation forms, etc. These files are kept only for immediate office reference use and are considered by the Agency to be part of the personnel file system. The Agency's internal regulations provide that such information is a part of the general personnel files and can only be disclosed through the Director, Peace Corps Office of Personnel Management in order that he or she may insure that any material to be disclosed is relevant, materials, current, and fair to the individual employee. It is also the policy of the Agency to limit the use of such files and to encourage the destruction of as many as possible.

Statement of General Routine Uses—The following general routine uses are incorporated by this reference into each system of records set forth herein, unless such incorporation is specifically limited in the system description.

1. In the event that a record in a system of records maintained by the Agency indicates any violation or potential violation of the law whether civil, criminal, or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant record in this system of records may be referred as a routine use, to the appropriate agency, whether Federal, state, local, or foreign charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or

implementing the statute, rule, regulation, or order issued pursuant thereto; such referral shall also include and be deemed to authorize any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the individual for employment purposes including the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved, provided however, that other than information furnished for the issuance of authorized security clearances, information divulged hereunder as to full-time volunteers under the Peace Corps Act (22 U.S.C. 2501) shall be limited to the provision of dates of service and a standard description of service as heretofore provided by the Agency.

3. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate or administrative tribunal of appropriate jurisdiction and such disclosed shall include disclosures to opposing counsel in the course of settlement negotiations.

4. Information from certain systems of records especially those relating to applicants for Federal employment or volunteer service may be disclosed as a routine use to designated officers and employees of other agencies of the Federal government for the purpose of obtaining information as to suitability, qualifications and loyalty to the United States Government.

5. Information from records systems may be disclosed to any source from which information is requested in the course of an investigation to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

6. Information in any system may be used as a data source, for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information may also be disclosed to respond to general requests for statistical information (without person identification of

individuals) under the Freedom of Information Act or the Privacy Act.

7. Information in any system of records may be disclosed to a Congressional office, in response to an inquiry from any such office, made at the request of the individual to whom the record pertains.

8. A record from any systems of records may be disclosed as a routine use to the National Archives and Records Service, General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. Information from records system may be disclosed to the U.S. Ambassador or his or her designee in host countries where the Peace Corps serves. Such release will be made only upon the written certification by the Ambassador or designee that the information is needed to perform an official responsibility. The purpose of this routine use is to apprise the Ambassador of information that host officials have, but which cannot be released to the Ambassador, regarding Peace Corps employees, contractors, trainees and Volunteers. On a case to case basis, such release is made to allow Ambassador to knowledgeably respond to official inquiries and deal with in-country situations which are within the scope of the Ambassador's responsibility.

Location of Domestic and Overseas Offices—The Agency maintains three Service Centers and Area Recruiting Offices in which certain systems or parts of systems are maintained. The Service Centers, their addresses, and the States within their jurisdictions are listed below. In the event of any doubt as to whether a record is maintained in a Service Center or Area Recruiting Office, a query may be directed to the Director, Office of Administrative Services, Peace Corps, Washington, D.C. 20526, who shall furnish all assistance necessary to locate a specific record.

New York Service Center, Peace Corps, 26 Federal Plaza, Room 1605, New York, New York 10278 (States serviced: Massachusetts, Vermont, New Hampshire, Rhode Island, Delaware, New Jersey, Georgia, Tennessee, Mississippi, Alabama, South Carolina, Florida, District of Columbia, Maryland, North Carolina, Kentucky, West Virginia and Virginia).

Chicago Service Center, Peace Corps, 3rd Floor, 10 W. Jackson, Chicago, Illinois 60604 (States serviced: New Mexico, Oklahoma, Louisiana, Texas, Arkansas, Illinois, Indiana, Minnesota, Wisconsin, Kansas, Missouri, Iowa, Nebraska, Michigan and Ohio).

San Francisco Service Center, Peace Corps, Room 533, 211 Main Street, San Francisco, California 94105 (States serviced: California, Nevada, Hawaii, Colorado, Montana, South Dakota, North Dakota, Utah, Wyoming, Washington, Oregon, Idaho, Alaska and Arizona).

The Peace Corps has offices overseas and the number fluctuates from time to time as programs are added or withdrawn. A complete list with specific addresses will be provided upon request to the Director, Office of Administrative Services, Peace Corp, 806 Connecticut Avenue, NW., Washington, D.C. 20526. Any particular country in which Peace Corps maintains a program may be addressed by writing to the Country Director, c/o the American Embassy in such country.

Notification—Individuals may inquire as to whether any system contains information pertaining to them by addressing the System Manager in writing. Such request should include the name and address of the individual, his or her social security number, and any relevant data concerning the information sought and, where possible, the place of assignment or employment, etc. In case of any doubt as to which system contains a record, interested individuals may contact the Director, Office of Administrative Services, Peace Corps, Washington, D.C. 20526, who has overall supervision of records systems and who will provide assistance in locating and/or identifying appropriate systems.

Access and Contest—In response to a written request by an individual, the appropriate System Manager shall arrange for access to the requested record or advise the requester if no such record exists. If an individual wishes to contest the content of any record, he/she may do so by addressing a written request to Director, Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526. The Director shall provide all necessary information regarding such contest and appeal.

Alphabetical Listing of Systems of Records:

Accounts Receivable (Collection of Debts Claims Records)—PC-1
 Congressional Files—PC-2
 Contractors and Consultants Files—PC-3
 Discrimination Complaint Files—PC-4
 Employee Occupational Injury and Illness Reports—PC-5
 Employee Pay and Leave Records—PC-6
 Information Gathering System—PC-7
 Legal Files—Staff, Volunteers, and Applicants—PC-8
 Payment Records; Travel Authorization Files; and Household Storage Files—PC-9

Peace Corps Partnership Donor Records—PC-10
 Personal Service Contracts Records—PC-11
 Property Records—PC-12
 Security Records—Peace Corps Staff/Volunteers and ACTION Staff—PC-13
 Staff Applicant and Personnel Records—PC-14
 Talent Bank—PC-15
 Travel Files—PC-16
 Volunteer Applicant and Service Records System—PC-17

PC-1

SYSTEM NAME:

Accounts Receivable (Collection of Debts Claims Records).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fiscal Services Branch, Office of Financial Management, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any former or current Peace Corps employee, trainee/volunteer or vendor allegedly erroneously overpaid by Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following records: 1. Register of debts claimed. This record consists of names and addresses of individuals who are indebted to Peace Corps including the date of the debt, a claim number, the amount of the debt, and the date the debt is paid if that has occurred. 2. Claim Record Card. This record consists of the same information in shorter form as that contained in the Register. 3. File Folders. This record consists of the initial billing, follow up letters for collection of debt and related correspondence together with a copy of the check or checks paying the debt if that has occurred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq. The Budget and Accounting Act of 1950. Federal statutes requiring and permitting the administrative settlement of claims by agencies.

PURPOSE(S):

These records were established to contain information and a record of final solutions resulting from alleged erroneous payments by the Peace Corps.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed in the following circumstances: To the General Accounting Office (GAO) or the Department of Justice in cases of administrative error involving overpayment and situations in which the agency has been unable to collect such debt. Disclosure may also be made to the General Accounting Office if the agency requests a waiver of repayment for error caused by overpayment of salary in excess to 500 dollars. Also, routine uses as stated in the above Preliminary Statement, and disclosure to consumer reporting agencies authorized by 5 U.S.C. 552a (b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in folders in metal file cabinets with manipulation proof combination lock.

RETRIEVABILITY:

Records are indexed in alphabetical order.

SAFEGUARDS:

These records are available only to officials of Peace Corps having a need for such records in the performance of their official duties and for the routine uses listed above.

RETENTION AND DISPOSAL:

These records are maintained until the settlement of a claim and then retired to the Federal Records Center to be destroyed in accord with General Records Schedule 6.1.2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Fiscal Services Branch, Accounting Division, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information is obtained from Peace Corps employees having knowledge of the facts.

PC-2**SYSTEM NAME:**

Congressional Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Congressional Relations, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system consist of bio-data, voting records, Peace Corps concerns of members of Congress affecting Peace Corps and copies of incoming and outgoing correspondence between Peace Corps personnel and members of Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

This system was established to keep Peace Corps officials informed as to concerns of members of Congress that affect the Peace Corps.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are not subject to routine use outside the Agency except for routine uses number 3, 6, and 8 in the preceding Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records in this system are maintained in file folders in metal filing cabinets locked at the close of the business day.

RETRIEVABILITY:

Records in this system concerning members of committees concerned with Peace Corps legislation are filed by Congressional committee and within each committee alphabetically. Congressional correspondence is filed alphabetically by last name of the member.

SAFEGUARDS:

Records in this system are generally available only to Peace Corps personnel having a need for such information in the performance of their official duties.

RETENTION AND DISPOSAL:

Inactive records are held two years; retired to the Federal Records Center for

ten years; then offered to the National Archives. Records are inactivated upon death, non-re-election or retirement.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Congressional Relations, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information in system of record is obtained from the following category of sources: 1. The Congressional Directory, Congressional Records, Congressional Quarterly, Periodicals and standard reference materials. 2. Members of Congress and their staffs. 3. Peace Corps employees. 4. Newspaper and magazine publications.

PC-3**SYSTEM NAME:**

Contractors and Consultants Files.

SECURITY CLASSIFICATIONS:

None.

SYSTEM LOCATION:

Africa, Inter-America and NANEAP Operations, and Office of Training and Program Support, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are serving, have served or could serve as Contractors/ Training Consultants for Peace Corps programs overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain correspondence, resumes, and other materials pertaining to prospective and current personal services contractors, training consultants, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

This system was established to provide a source of information to the International Operations Contract/

Training Specialists and the Administrative Liaison, OTAPS, regarding regional program needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subject to general routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in metal file cabinets with three-way combination locks.

RETRIEVABILITY:

Records are indexed in alphabetical order. Alternatively records may be indexed by skills categories but alphabetically within such skills categories.

SAFEGUARDS:

Records are available only to Peace Corps staff who have a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

These records are reviewed annually and those which are no longer necessary for current operations are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Contract/Training Specialist, Africa, Inter-America or NANEAP Operations, and Administrative Liaison, Office of Training and Program Support, Peace Corps, 806 Connecticut Avenue, N.W., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

The individual contractor or consultant to whom the record pertains, supervisors and other Peace Corps personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a(k)(5).

PC-4

SYSTEM NAME:

Discrimination Complaint Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Compliance, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee, applicant for employment, Peace Corps Volunteer, trainee, or applicant for volunteer service who has filed a complaint of discrimination against Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

The complaint, correspondence related to the complaint, copies of personnel records, investigatory materials and affidavits, and information as to how the complaint was resolved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478, 29 CFR Part 1613, 22 U.S.C. 2504(a), and 42 U.S.C. 5057(c).

PURPOSE(S):

This system was established to record actions taken on complaints of discrimination against Peace Corps.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Contents of these records may be disclosed and used as follows: a. To the Equal Employment Opportunity Commission or the Merit Systems Protection Board and its Special Counsel for hearings and/or administrative appeals on a complaint of discrimination. b. To the Department of Justice in connection with any suits brought against the agency for alleged discrimination. c. To the Equal Employment Opportunity Commission for advice and counsel within its jurisdiction. d. Other routine uses as stated in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders in metal file cabinets with manipulation proof combination locks when not in immediate use.

RETRIEVABILITY:

Records are indexed alphabetically.

SAFEGUARDS:

Records in the system are available only to appropriate personnel in the Office of Compliance and other designated officials of Peace Corps with a need of such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed four years after the close of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Compliance, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Data in this system is obtained from the following categories of sources: 1. Employees, Volunteers or applicants of Peace Corps involved as complainants, witnesses, etc. in discrimination complaints. 2. Reports of investigations and other materials prepared by Equal Employment Opportunity Officers, counsellors and investigators. 3. Copies of Agency documents relevant to any EO investigation. 4. Records of hearings on complaints. 5. Records of decision on complaints or settlements thereof.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a (k)(2) and (k)(5).

PC-5

SYSTEM NAME:

Employee Occupational Injury and Illness Reports.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Maintained at Peace Corps Headquarters, the Service Centers and Peace Corps countries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps employees who have had job-related injuries or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of occupational injuries and illness and medical reports with respect thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Occupational Safety and Health Act of 1970, Executive Order 12196.

PURPOSE(S):

These records were established to record information and resulting actions pertaining to employee occupational injuries and illness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Occupational injury and illness reports are maintained in order to provide data, including statistical data required by the Occupational Safety and Health Administration, Department of Labor. Other routine uses as stated in the above preliminary statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in folders in metal file cabinets with manipulation proof combination lock.

RETRIEVABILITY:

Records are indexed in alphabetical order.

SAFEGUARDS:

Records are available only to Peace Corps employees having a need for such records in the performance of their official duties.

RETENTION AND DISPOSAL:

Records in this system are retained indefinitely pending issuance of final retention schedule by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Health and Benefits and Analysis Branch, Office of Medical Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories

of sources: Employees who have suffered a work-related illness or injury and Peace Corps supervisory personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a (k)(2).

PC-6**SYSTEM NAME:**

Employee Pay and Leave Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Financial Management, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions employing, promoting and terminating employees, savings bond applications, advices of allotments, IRS tax levels, notice of deduction for health insurance, Combined Federal Campaign, union dues withholdings applications, and educational allowances for children of overseas employees and records regarding collections for overpayments and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

GAO Policy and Procedures Manual; 31 U.S.C. 3512; and the Budget and Accounting Procedures Act of 1950.

PURPOSE(S):

This system was established to record moneys paid, allotments authorized, leave earned and used, and retirement benefits earned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records are routinely provided as follows:

1. To the Treasury for payroll and savings bonds and other deduction purposes.
2. To Internal Revenue Service with regard to tax matters.
3. To participating insurance companies holding policies with respect to Federal employees employed by Peace Corps.
4. To Federal Agency to perform payroll services for the Peace Corps. The Department of Commerce is currently performing this function.

Also, other general routine uses listed above in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in folders and looseleaf binders in metal file cabinets with manipulation proof combination locks. The individual Time and Attendance records maintained by designated timekeepers throughout the agency are stored in a metal file cabinet with a key lock or manipulation proof combination lock.

RETRIEVABILITY:

Records are indexed in alphabetical order.

SAFEGUARDS:

Records in this system are available only to employees of Peace Corps with a need for such records in the performance of their official duties.

RETENTION AND DISPOSAL:

Records in this system are maintained for three years after the end of the fiscal year in which an employee terminates employment with Peace Corps and then retired to the Records Center in accordance with GAO instructions and General Records Schedule 2. The Time and Attendance sign in/sign out sheets are maintained for six years in the Agency Records Center and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Designated timekeepers throughout the agency and Chief, Volunteer and Staff Payroll Services Branch, Accounting Division, 806 Connecticut Avenue, NW., Washington, DC 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Peace Corps employees and the individual to whom the record pertains.

PC-7**SYSTEM NAME:**

Information Gathering System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Administrative Services,
Peace Corps, 806 Connecticut Avenue,
NW, Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Persons serving in, having served in, or who are served by programs initiated by Peace Corps, (2) persons working with Peace Corps programs on a volunteer basis and (3) the general public (nationwide for media impact studies, postservice studies, etc).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information necessary to provide statistical and analytical data in connection with agency activities including volunteer projects. The agency anticipates studies in such areas as: Recruitment, impact of advertising campaigns or media on a given area; public awareness of Peace Corps programs; program effect in particular demographic areas; impact of volunteer service on individuals after service. Individuals will be asked to complete a form and will be informed of the particulars of a study, i.e., the specific purpose of the study, who is conducting the study, the use of the information they submit; who has access to information; provisions of the Privacy Act; the authority for collection of the data; the effect of nondisclosure; and the particular study title.

Information requested may include names and addresses, relationships to a particular agency activity, age, race, education, ethnic background, employment history, family size and age groups, marital status, volunteer program interest area, effect of advertising on the individual. Although it is impossible to foresee all information which will be gathered for study, the agency anticipates that such data may be collected. Subsystems of records may be set up for relatively short periods of time during the information gathering stage. The overall responsibility for these subsystems comes under the Office of Administrative Services. Records will be retained only as long as needed for the study but statistical data may be retained after personal identifiers have been removed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501, et seq.

PURPOSE(S):

This system was established to provide the Peace Corps with statistical and analytical data in connection with agency activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data maintained in this system will be used to enable the agency to carry out its authorized functions in connection with program and project evaluation as stated in routine use number 6 in the preliminary statement above in this notice. Initially, the information will be furnished by the individual to the Peace Corps staff personnel or personnel performing the study on behalf of Peace Corps. Such records will be retained only as long as required to complete the work.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records may be maintained in various fashions. Material placed on computers shall be stored in disc packs with tape backup. All records will, in any event, be maintained and filed in rooms or cabinets with manipulation proof combination locks when not in immediate use.

RETRIEVABILITY:

Records are retrievable through name or identifying number.

SAFEGUARDS:

Records in this system will be available only to appropriate personnel, including staff or other individuals working on Peace Corps' behalf, having a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records in this system will be maintained only so long as necessary to carry out the management survey or other function for which they were collected and then will either be destroyed or the information may be stored after removal of all personal identifiers.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Service, Peace Corps, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information will be obtained from the individual or persons dealing with Peace Corps programs.

PC-8**SYSTEM NAME:**

Legal files—Staff, Volunteers and Applicants.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the General Counsel, Peace Corps, 806 Connecticut Avenue, NW, Washington, D.C. 20526

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Applicants for employment with Peace Corps 2. Staff employees of Peace Corps. 3. Peace Corps Volunteers, trainees and applicants for volunteer service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of any legal matter affecting any present or former staff member or Peace Corps Volunteers or any applicant for employment or volunteer service in Peace Corps whose employment or service has raised any legal question. Included among the kinds of records maintained are those involving employee grievances, appeals from adverse actions, claims by and against staff members, records concerning litigation in which Peace Corps staff members or Volunteers become involved as parties, legal queries from staff members regarding themselves or their employment and answers thereto and any other matter involving a contact between a staff member or Volunteer and an attorney of the Office of General Counsel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

These records are maintained under the general authority of the Office of General Counsel to represent the Agency in connection with its dealings with its employees and volunteers and the general functions of the Office of General Counsel to provide advice and

counsel to the Director of the Agency and his or her staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are not routinely disclosed outside the Agency except in the following circumstances: 1. To the Department of Justice in conjunction with litigation or potential litigation in situations in which the Department may be called upon to provide representation to the Agency. 1. In circumstances set forth in paragraph 1, 3, 5, 7, and 8 of the general routine uses set forth in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are kept in separate file folders in cabinets secured by changable combination locks or bar locks secured by such combination locks.

RETRIEVABILITY:

Files are available only to personnel of the Office of General Counsel which includes attorneys and confidential secretaries.

RETENTION AND DISPOSAL:

Files are maintained for the duration of the litigation or other matter to which they refer or until the applicable

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Peace Corps, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Data is obtained from the following categories of sources: 1. Peace Corps applicants for employment, employees, volunteers and trainees and applicants for volunteer service. 2. Correspondence and reports from persons and agencies dealing with the agency and its employees. 3. Work product and research of lawyers of the office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

PC-9

SYSTEM NAME:

Payment Records; Travel Authorization Files; and Household Storage Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Financial Management, Fiscal Services Branch, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any current or former Peace Corps employee, Volunteer or vendor, or person invited to travel for Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The Voucher Payment Record is a single index card form containing the following data: Invoice number or date, amount paid, voucher and schedule number, contract or purchase order number and type of payment (advance, partial or final). (2) The Schedule of Payments Records consist of the invoice received, document authorizing the action to be taken such as the travel authorization or purchase order and the voucher making the payment as well as the SF-1166 (Voucher and Schedule of Payments) and SF-1081 (Voucher and Schedule of Withdrawals and Credits—used in government only), and to which other documents are attached. (3) The Travel Authorization records consists of copies of obligated travel authorizations, travel vouchers, receipts, records of payments and other materials related to official travel. (4) The staff and Volunteer Household Storage records consists of Travel Authorization, a copy of the invoice for payment and record of partial payment form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq; The Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; and the Federal Claim Collection Act of 1966.

PURPOSE(S):

The purpose of this system is to record payments made as a result of purchase orders, travel authorizations, or other authorization documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The contents of these records may be disclosed and used as follows: a. To appropriate officials in the Department of Treasury, b. To the household storage vendor in the event there is a discrepancy between the vendor and Peace Corps records, c. Subject to routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in filing cabinets with bar locks, key locks or manipulation proof combination locks when not in immediate use.

RETRIEVABILITY:

Records are filed alphabetically by last name or numerically by schedule number.

SAFEGUARDS:

Records are available only to appropriate Fiscal Services Branch personnel and other appropriate officials of Peace Corps with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records are held for three years and retired to the Federal Records Center in accordance with General Accounting Office instructions and General Records Schedule 6. Staff and Volunteer household storage records are retained for two years after termination or retirement and retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Fiscal Services Branch, Accounting Division, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Data is obtained from documents provided by the individual or the vendor.

PC-10**SYSTEM NAME:**

Peace Corps Partnership Donor Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Peace Corps, Office of Private Sector Development, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting information on how to join and/or information on current projects seeking support in the Peace Corps Partnership Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Currently in hard copy form but will be computerized. Consists of name, organization (if appropriate), current home/business address and telephone number, amount of contribution, name of project supporting and source that prompted interest in the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et. seq.

PURPOSE:

This system is being established to provide a continuing source of donors to the Peace Corps Partnership Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records will be used by the Peace Corps to inform individuals who have expressed an interest in the Partnership Program, how to join and about new projects on a regular basis. Information in this system is also subject to routine uses 3, 6, 7, and 8 as listed above in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are currently maintained in hard copy form which are kept in locked files when not in immediate use in a building with a 24 hour guard. When the system is placed on the computer the hard copy will be destroyed. The computer record shall be stored on diskettes or disc packs with tape backup in secured rooms with access limited to those employees whose official duties require access.

RETRIEVABILITY:

Records are indexed by categories such as name, city, state, organization and special interest.

SAFEGUARDS:

Records in the system will be available only to the Peace Corps, Office of Private Sector Development staff on a need to know basis.

RETENTION AND DISPOSAL:

Unless removal or extension is requested by the individual the record is maintained for ten years after voluntary entry in the file.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Private Sector Development, Peace Corps, Room 1204, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the above Preliminary Statement.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the above Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information is supplied by individuals who have requested more information about the Partnership Program.

PC-11**SYSTEM NAME:**

Personal Service Contracts Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Contracts Division, Peace Corps, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons contracted by the Headquarters Procurement Branch to serve as personal services contractors for the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained contain the history of employment, including earning records of individuals hired as personal services contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

This system was established to keep a record of information used to determine personal service contractor eligibility for employment and pay determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subject to routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Files are maintained in folders in metal file cabinets with manipulation proof combination locks and in a locked room when not in immediate use.

RETRIEVABILITY:

Records are arranged by contract number.

SAFEGUARDS:

Records in the system are available only to appropriate personnel in the Contracts Division and other appropriate officials of Peace Corps with the need for such records for the performance of their duties.

RETENTION AND DISPOSAL:

Records in the system are maintained in the Contracts Division for one year after the closing date of the contract then disposed of in accordance with General Records Schedule 3.4.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Contracts Division, Peace Corps, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the following categories of sources: Individual contractors, Peace Corps Overseas Staff, and Peace Corps Washington Staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by 5 U.S.C. 552a (k)(5).

PC-12

SYSTEM NAME:

Property Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

These records are maintained in the office of each Peace Corps program overseas. The number of offices fluctuates from time to time as programs are added or withdrawn. A complete list with specific addresses will be provided upon request to the Director, Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526. Any particular country in which Peace Corps maintains a program may be addressed by writing to the Country Director, c/o the American Embassy in such country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Peace Corps staff, Volunteers, and trainees who have trained overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records of U.S. Government property assigned to Peace Corps staff, Volunteers or trainees for which they are accountable and which must be returned to the Peace Corps.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. Section 2501, et seq.

PURPOSE(S):

The system was established to record and account for U.S. Government property assigned to contractors, to Peace Corps overseas staff, Volunteers or trainees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records may be disclosed and used as follows: To the Department of State or any other Federal agency having the responsibility for accounting for the disposition of Federal property. Also, subject to general routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in metal file cabinets.

RETRIEVABILITY:

Records are indexed in alphabetical order in each Peace Corps post overseas.

SAFEGUARDS:

Records are available only to Peace Corps staff having a need for such records in the performance of their official duties. For these purposes, host country nationals employed by the U.S. Government and working for Peace Corps are considered staff.

RETENTION AND DISPOSAL:

Records in this system are retained at overseas posts for two years after an employee or Volunteer leaves the country and then are destroyed burning, shredding or such other method as is approved by the Department of State for the disposal of such records.

SYSTEM MANAGER(S) AND ADDRESS:

Country Directors in each country in which Peace Corps maintains a program.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Peace Corps overseas staff. The individual to whom the record pertains.

PC-13

SYSTEM NAME:

Security Records—Peace Corps Staff/Volunteers and ACTION Staff.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Peace Corps, Personnel Security Staff Office, 806 Connecticut Avenue, NW, Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for Peace Corps and ACTION staff employment and volunteer service. Individuals considered for access to classified information or restricted areas and/or personnel security determinations as contractors, experts, instructors, and consultants to Federal programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, behavior in the community where he or she lives; arrests and convictions for any violations of the law; reports of interviews with former supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries to law enforcement agencies, former employers, educational institutions attended; and other similar information developed from the above. Index cards are maintained on all appointees and volunteers on whom investigations were conducted. The cards reflect personal identifying information and investigative and clearance histories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2519, Executive Order 10450, and Federal Personnel Manual, Chapters 731, 732 and 736. In addition to the provisions cited above, there are various acts of Congress relating to personnel investigations authorizing the same by the Office of Personnel Management, which responsibility can, under Civil Service regulations and law, be delegated in whole or in part to agencies.

PURPOSE(S):

This system was established to keep on record that information used to determine eligibility or suitability for employment or volunteer service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: a. To the Office of Personnel Management as a part of the central OPM personnel investigation records system. b. Subject to the general routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Investigative record folders and index cards are maintained in General Services Administration approved metal file cabinets with three way combination locks in a room which is locked when not in use.

RETRIEVABILITY:

Records are indexed in alphabetical order.

SAFEGUARDS:

All officials or employees having access to such records are required to have an appropriate security clearance. Generally these records are available only to personnel of the security office and to the Director of the Peace Corps and his other designees.

RETENTION AND DISPOSAL:

Records are maintained in the security office until closed, are held 3 years then retired to Federal Records Center. The Federal Records Center holds 27 years and then destroys.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Security Staff Office, Office of the Associate Director for Management, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURE:

See the Access and Contest paragraph in the Preliminary Statement above in this notice. The Peace Corps conducts security investigations for the ACTION agency on a contract basis and resulting records are interfiled with Peace Corps records. All requests from the subjects of the ACTION records are referred to the ACTION General Counsel for a determination as to access and contest.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures".

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the following categories of sources: a. Applications and other personnel/security forms and information furnished by the individual. b. Investigative material furnished by other Federal agencies. c. By personal investigation or written inquiry from such sources as employers, schools, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials and other sources as may be developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

PC-14

SYSTEM NAME:

Staff Applicant and Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Peace Corps, Office of Personnel Management, 806 Connecticut Avenue N.W., Washington, D.C. 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, applicants, any individual involved in a grievance or grievance appeal or who has filed a complaint with the Equal Employment Opportunity Commission, Merit Systems Protection Board, Federal Labor Relations Authority, Federal Mediation and Conciliation Service, or other organization having jurisdiction over any aspect of employer/employee relations, and individuals considered for access to classified information or restricted areas and/or security determinations as contractors, employees of contractors, experts, instructors, consultants to Federal programs, or members of an Advisory Committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The Grievance, Appeal and Arbitration files contain copies of petitions, complaints, charges, responses, rebuttals, evidentiary materials, briefs, affidavits, statements, records of hearings and decisions or findings of fact with respect thereto and incidental correspondence regarding complaints and appeals with respect to grievances and arbitration matters. (2) The Employees' Indebtedness files contain records which are primarily correspondence regarding alleged indebtedness of Peace Corps employees, including employees' responses, the agency's response to the employee and/or creditor and administrative correspondence and records relating to agency assistance to the employee in resolving the indebtedness, if appropriate. (3) The Performance Evaluation files consist of the annual performance evaluations of employee performance prepared by supervisors and reviewed by supervisory reviewing officials, together with comments, if any, by the employees evaluated. (4) The Management-Union Records system consists of automated data printouts showing an employee's name, grade, series, title, organizational entity and other associated data which determines his or her inclusion or exclusion from the bargaining unit under the existing union contract. The record also contains a printout showing the amount of dues withheld from each employee who has authorized such withholding, and other related data. (5) The Personnel

Management Information system is a computer-based record which includes data relating to tenure, benefits eligibility, whether former volunteer, end of tour dates, awards, etc., and other data needed by Personnel and agency managers which used for management purposes. (6) The Inactive Service Record Card contains a record of personnel actions made during employment, forwarding address, reason for leaving, social security number, date of birth, tenure information and disposition of the official personnel folder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq., provisions of Title 5, U.S.C., Title 5, Code of Federal Regulations, the Federal Personnel Manual, the Foreign Affairs Manual, Executive Order 11491 and other Executive Orders concerning management relations with employment organizations and various acts of Congress relating to personnel and security investigations.

PURPOSE(S):

This system was established to keep on record that information used to determine eligibility or suitability for employment; for payment of salary and other benefits; to effect personnel actions; to resolve complaints or grievances, and to provide essential employment-related information about employees to the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Grievance, Appeal and Arbitration Records and Files—in addition to the general routine uses may be disclosed and used (a) To the Office of Personnel Management; the Merit Systems Protection Board and the Office of Special Counsel, MSPB, on request in conjunction with any appeal or in conjunction with its official duties with regard to personnel matters and investigation regarding complaints of Federal employees and applicants; (b) To designated hearing examiners, arbitrators and third-party appellate authorities involved in hearing or appeal procedures. (2) Employees' Indebtedness Records and files may be released under general routine uses 1 and 2 listed in the preliminary statement in this notice. Under routine use number 1 records may be released only to an appropriate Federal agency and the records may also be referred to a court of law and before an administrative board hearing matters related to probation and parole. (3) Performance Evaluation files—in

addition to the general routine uses may be disclosed to the Office of Personnel Management in connection with any request for information or inquiry as to Federal personnel regulations. (4) Management Union Records—in addition to the general routine uses may be disclosed and used for the following: (a) To the Peace Corps employees union for maintenance of its records with respect to dues and inclusion in the bargaining unit, (b) to the Treasury Department of preparation of payroll checks with appropriate withholding of dues, (c) to the OPM for union related reporting in the area of management/labor relations. (5) Personnel Management Information System in addition to the general routine use is used by agency officials for day to day work processing; statistical reports without personal identifiers; and for in-house reports relating to management. Information contained in this record is reflected in the individual's official personnel folder. (6) Inactive Service Record Card File—is used by personnel staff to verify service and for day to day work information. Unless specifically limited, information contained in these files is subject to the general routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, lists or looseleaf binders and are stored in metal file cabinets with a three-way combination lock and/or secured rooms with access limited to those employees whose official duties require access.

RETRIEVABILITY:

Records are indexed by name or social security number or employee number.

SAFEGUARDS:

Records are available only to Peace Corps employees having a need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

The Grievances and Appeals Files are destroyed three years after the case is closed. Adverse Action files are destroyed four years after the case is closed. Employee Indebtedness records are destroyed when six months old. Performance Evaluation records are destroyed one year after employee completes one year of acceptable performance from the date of written advance notice of proposed removal or

reduction in grade notice; acceptable performance ratings are destroyed upon supersession. The Personnel Management Information system computer based inactive records are purged one year from the date of resignation, separation and termination of employees from Peace Corps rolls. The Inactive Employee Service Records are reviewed annually for the removal and destruction of records with resignation, separation and termination dates that are six or more years old. The Management Union lists are retained until superseded by a corrected or updated list.

SYSTEM MANAGER(S) AND ADDRESS:

The Director of Personnel has overall responsibility for the official records covered by this system. Inquiries regarding records in these systems may be addressed to the Director of Personnel, or to the Privacy Act Officer, Office of Administrative Services, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORDS ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, the official personnel folder, statistical and other information developed by the Office of Personnel Management staff such as end of tour dates, arrival at post dates, and within class increase due dates, etc.; agency supervisors and reviewing officials, individual employee fiscal and payroll records; alleged creditors of employees; witnesses to any occurrences giving rise to a grievance, appeal or other action; hearing records and affidavits and other documents used or usable in connection with grievance, appeal, and arbitration hearings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a(k)(5).

PC-15

SYSTEM NAME:

Talent Bank.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Personnel Management and the Office of Executive Talent Search and at agencywide manager's desks.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for staff employment with Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain copies of applications for employment (SF-171), resumes submitted by applicants, and other background information regarding qualifications of the applicant for staff positions in Peace Corps.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S):

The purpose of this system is to provide a supply of qualified applicants for Country Director and senior level positions with the Peace Corps. This system also includes applications solicited or received by agency managers for unique or hard to fill positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: a. To the Office of Personnel Management with regard to any question of eligibility, suitability or qualifications of an applicant for employment. b. To any source from which information is requested in the course of an inquiry as to the qualifications of an applicant, to the extent necessary to identify the individual, inform the source of the nature and purpose of the inquiry, and to identify the type of information requested. c. To the Executive Office of the President for candidates for Country Director and policy making positions. d. To United States Ambassadors in Peace Corps countries for Country Director appointees. e. Subject to routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in folders in metal file cabinets with three-way

combination locks, or in a locked room or area during nonworking hours.

RETRIEVABILITY:

Records are indexed in alphabetical order.

SAFEGUARDS:

Records are generally available only to Peace Corps employees with the need for such records in the performance of their duties.

RETENTION AND DISPOSAL:

Records filed in the Office of Personnel Management and the Office of Executive Talent Search banks are destroyed when applications are two years old. Applications which result in appointments are filed in the Official Personnel Folder and when the employee leaves the agency are retired to the Federal Records Center in St. Louis, or forwarded to the next Federal employing office. Applications filed at agency manager levels are held no longer than one year.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Office of Personnel Management and the Director, Office of Executive Talent Search, Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C. 20526; agency managers located at Peace Corps headquarters and field offices.

NOTIFICATIONS PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this Notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the individual and from oral or written inquiries from sources disclosed by the applicant such as: Employers, schools, references, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 522a(k)(5).

PC-16**SYSTEM NAME:**

Travel Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Peace Corps Washington, D.C. and domestic and overseas field offices. Addresses are listed in the Preliminary Statement at the beginning of this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Peace Corps employee, expert, consultant, applicant/trainee/volunteer, contractor or other individual engaged in authorized official travel for the Peace Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel authorizations, vouchers; itinerary; Government Bills of Lading; packing letter and passport numbers which are included for overseas travel; diplomatic, official and no-fee passports for staff, trainees and volunteers; completed visa applications (filed temporarily for Peace Corps Trainees), and other travel related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et. seq. The Budget and Accounting Act of 1921; The Accounting and Auditing Act of 1950; The Federal Claim Collection Act of 1966.

PURPOSE(S):

This system is maintained to provide a record to account for and issue payments as a result of authorized official Peace Corps travel and for audit purposes for the accountability of the expenditure of Federal funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subject to routine uses listed in the above Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained in metal filing cabinets with manipulation proof combination locks or key locked filing cabinets or in a locked room after business hours.

RETRIEVABILITY:

Records are arranged alphabetically by name in accord with categories i.e., staff travel file, Peace Corps Applicant/Trainee/Volunteer travel file, and consultant, expert, and invitational travel files. Some records are filed by country.

SAFEGUARDS:

Records are available only to headquarters Travel Branch staff, field

administrative staff and other appropriate officials of the Peace Corps with a need for such records for the performance of their duties.

RETENTION AND DISPOSAL:

Records in the system are maintained for one year after the individual leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Travel Branch, Office of Administrative Services, 806 Connecticut Avenue, NW., Washington, D.C. 20526, and the Administrative Officers in the Peace Corps' domestic and overseas field offices. The addresses for the three Service Centers, area recruiting offices and overseas posts change from time to time and may be obtained by contacting the Director, Office of Administrative Services, Peace Corps.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the above Preliminary Statement.

RECORD ACCESS PROCEDURE:

See the Access and Contest paragraph in the above Preliminary Statement.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information is furnished by the individual traveller, supervisors or other Peace Corps staff.

PC-17**SYSTEM NAME:**

Volunteer Applicant and Service Records System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system is made up of subsystems which are located agencywide in Peace Corps offices. These locations are (a) Headquarters, (b) three Service Center offices and area and sub-area Recruitment offices, and (c) each Peace Corps overseas program office. The number of Peace Corps overseas offices fluctuates as programs are added or withdrawn. Specific addresses will be provided upon request to the Director of Administrative Services. Any particular country in which Peace Corps maintains a program may be addressed by writing to the Country Director, Peace Corps, c/o The American Embassy in the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Peace Corps volunteers, trainees and applicants for volunteer service including Peace Corps United Nations Volunteers. A record may exist in a subsystem depending on whether a record was established as part of the application, selection, placement, and service process.

CATEGORIES OF RECORDS IN THE SYSTEM:

This major system covers a number of temporary and permanent records established during the applicant, selection, placement, training and service stages. Most information maintained in this system is furnished by the individual. Generally, the individual is aware of any necessary investigations being conducted and is either counseled or authorizes such investigations. As the record progresses through the subsystems, generally, the following folders may be established: PCV Applicant File; Medical File; and Trainee/Volunteer Service File. If certain situations warrant, a Special Services file may be established. These records are explained in detail in the following paragraphs. At the processing and program support desk levels temporary day to day sets of records may be used or set up to meet the needs of work processes. This information is usually extracted from the official record on is a duplicate of information contained in the official record and is utilized only as long as needed for a particular decision, project or period of service. Upon completion of the use of such records they are destroyed or, in the case of a permanent document or record, are forwarded to the Peace Corps Records Center for retirement.

(1) **Volunteer Applicant Folder and Computer Based Record:** This record contains forms related to the applicant process such as the application, references, overseas suitability assessments, invitation to training, trainee enrollment forms, correspondence relating to the application, copies of other application documents, such as a Peace Corp background investigation form, evaluator-recruiter interview forms. Information is extracted from the official record hard copy to create a computer record which is used to track progress, issue labels for correspondence to the applicant and account for the establishment, retirement and ultimate destruction of the individual record. Statistical information, without personal identifiers, is used from the computer record.

(2) **Trainee and Volunteer Service Pay Folder and Computer based record:** This

record contains correspondence, forms related to pay allowances, travel and service such as, the Oath, designation of beneficiary, address, social security number, duty station, next of kin, trainee registration form, service and termination documents. Information is coded from hard copy documents to create a computer record for pay and verification of service purposes.

(3) **Medical Folder:** The medical record contains medical examination forms and fitness for duty reports, medical claims, correspondence and cables, medical histories, payment records, record of the consulting physician, treatment, hospitalization and disposition of the case, and history of psychiatric or psychological treatment.

(4) **Special Services Folder:** This record contains information pertaining to any unusual or extraordinary action or circumstances happening during service or causing the termination of the volunteer or trainee. These records contain details of reenrollments, reinstatements, death or termination. Details include name, country of assignment, program number, dates of the action, and supportive documentation. Supportive documentation would include termination reports, staff recommendations, cables, financial information, travel arrangements and medical clearance. Death cases may also include an autopsy report, documentation of account of the death, designation of beneficiary, policy report, death certificate, correspondence related to final arrangements, money payments and other financial matters.

(5) **Overseas Post Service and Medical Records:** Contain correspondence and forms relating to in country service such as records of all payments or accrued credit to volunteers and trainees, advances or other items due to the government from volunteers or trainees, monthly living allowances, leave allowances, settling in allowances, property assignments. The medical record is maintained at post by the Peace Corps Health Official. It contains the entrance physical and dental examination records and record of treatment received while in Peace Corps.

(6) **United Nations Volunteer Records:** These records contain applications, correspondence related to the applicant/placement process, other records connected with the application, training and placement of persons wishing to serve or serving as United Nations Volunteers. For short periods of time references furnished by the applicant in support of the UNV

application are kept in the UNV folder until the PC Applicant folder is received from the Office of Placement by Multilateral Programs. Then the UNV references, along with the UNV application, are forwarded to Geneva/UNV. Medical history forms for UNV applicants are forwarded by the examining facility to Peace Corps Office of Medical Services, who, after medical clearance by Peace Corps, forward them to the Medical Office, Geneva/UNV. At the end of service or inactivation of the record the U.N.V. record is forwarded to the Peace Corps Record Center for combining and retirement as regular Peace Corps volunteer records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, 22 U.S.C. 2501 et seq., and The Budget and Accounting Act of 1950.

PURPOSE(S):

This system was established to maintain records of individuals who apply for Peace Corps Volunteer service and to record resulting actions taken on the applications and service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records may be disclosed and used as follows:

(a) As stated in our general routine uses unless specifically exempted under this heading.

(b) To Peace Corps Volunteer host country officials to obtain visas, inform of pending arrival of the trainee/volunteer and for review of their qualifications for a program.

(c) To the trainee/volunteer's family or next of kin so that he or she may be located in case of emergency.

(d) To the Social Security Administration for crediting of social security accounts and reports withholdings.

(e) To the Internal Revenue Service to report on taxes paid and for income purposes.

(f) To Federal agencies having a need to verify volunteer eligibility for Federal employment under provision of Executive Order 11103.

(g) To the Treasury Department for purposes of issuing payroll checks, readjustment allowance checks or to report overpayments.

(h) To appropriate overseas U.S. Government agencies for monthly payroll preparation.

(i) To verify active or former volunteer service.

(j) Regarding the United Nations Volunteers records: In addition to our

general routine uses the contents of these records may be disclosed and used as follows: 1. To designated officers and employers of the United Nations having a responsibility for the selection and placement of U.N. Volunteers. 2. To officials of a proposed host country desiring the assignment or placement of U.N. Volunteers.

(k) Regarding medical records: Notwithstanding subsections (a) through (j), in addition to our general routine uses the medical records may be disclosed or used only as follows: 1. To the Office of Workers' Compensation Programs, U.S. Department of Labor in connection with claims under the Federal Employee's Compensation Act. 2. To a physician or other medical personnel treating or involved in the medical treatment and/or care of an applicant, trainee or volunteer and having a need for such records for the provision of the medical treatment or care. In situations where it is practicable, the individual's consent will be obtained before releasing such information. 3. To psychiatrists or clinical psychologists when necessary for treatment. To the extent practicable disclosure will not be made without approval of the individual. 4. In death cases to notify designated life and/or personal property insurance companies to obtain payment of insurance benefits; to notify the Office of the Vice President for the preparation of condolence letters; to the family and next of kin; and Department of State.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders, log books, cards, magnetic tape or disc packs with tape backup and are filed in metal filing cabinets with manipulation proof combination lock or in a room with a combination lock in the door, or in a locked room when not in use.

RETRIEVABILITY:

The majority of the subsystem records are retrievable alphabetically by the last name. A few are retrievable by the social security number; by subject headings but access may be gained by reference to an alphabetical name index; or by alphabetical order by country of assignment.

SAFEGUARDS:

Records are generally available only to Peace Corps employees with specifically assigned duties which require working with the records on a day to day basis. They are available to other Peace Corps employees having the

need for such records in the performance of their official duties. Personnel screening is employed to prevent unauthorized disclosure. Officials or employees having access to the security investigation records are required to have an appropriate security clearance.

RETENTION AND DISPOSAL:

Most volunteer records are kept no longer than seven years. The Volunteer Personnel and Payroll Computer Record and the Volunteer Description of Service records are kept permanently. Medical records are destroyed as follows: (1) Records of rejected applicants are destroyed after 18 months; (2) records of trainees who do not become volunteers and records of individuals who enroll as volunteers are destroyed 25 years from the completion of service or termination date. Applicant records are destroyed as follows: (1) Immediately rejected applicant records are destroyed in six months; (2) records of applicants rejected before reporting to training are destroyed in one year; and (3) records of individuals who report to training are destroyed seven years from the completion of service or termination date.

SYSTEM MANAGER(S) AND ADDRESS:

As the record flows from one stage to another, or if a record is established for a specific purpose, the system manager is the agency official responsible for that particular function. If an individual is in doubt as to whom to contact, he or she should contact the Director, Office of Administrative Services. The system managers are:

1. The three Peace Corps Service Center Managers located at the New York Service Center; Chicago Service Center; and the San Francisco Service Center.
2. The following system managers are located at 806 Connecticut Avenue, NW., Washington, D.C. 20526:
Chief, Office of Placement
Chief, Health Benefits and Analysis Division
Chief, Medical Operations Division
Chief, Volunteer and Staff Payroll Services Branch
Director, Management Information and Assessment Division
Supervisor, Peace Corps Applicant Records Center, Office of Placement
Director, Office of Special Services Coordinator, Multilateral Programs Section
Peace Corps Country Desk Officers
3. The following system managers can be contacted at the overseas post of assignment:

Peace Corps Country Directors Overseas
Peace Corps Medical Officers Overseas.

NOTIFICATION PROCEDURE:

See the Notification paragraph in the Preliminary Statement above in this notice.

RECORD ACCESS PROCEDURES:

See the Access and Contest paragraph in the Preliminary Statement above in this notice.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information is obtained from the individual; sources whom the individual has named; Peace Corps employees and other volunteer/trainees; medical personnel who have treated an applicant/trainee/volunteer or reviewed their medical records; medical contractors; U.S. Government investigative agencies, including the Office of Personnel Management; The Merit Systems Protection Board and its Special Counsel; the Federal Labor Relations Authority; local law enforcement officials; Peace Corps Host Country Nationals; Peace Corps Country American Embassy and Consulates, United Nations Staff; and job supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

These records or portions of these records may be exempted by authority of 5 U.S.C. 552a (k)(5).

[FR Doc. 85-1039 Filed 1-11-85; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21629; File No. SR-AMEX-84-41]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 28, 1984, the American Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Rule 950 to permit stop and stop limit option orders to be elected by a quotation as set forth below.

Italics indicated material proposed to be added; [brackets] indicate material proposed to be deleted.

Rule 950. Rules of General Applicability

(f) The provisions of Rule 154 and Commentary thereto, with the exception of paragraphs [.04] .12 and .14 of such Commentary, shall apply to Exchange option transactions and the following additional Commentary shall also apply:

... Commentary

[.15] .01 Unless the Exchange otherwise directs, a specialist shall accept stop orders and stop limit orders in option contracts in which he is so registered. A specialist shall not accept spread orders or straddle orders in option contracts in which he is so registered. [In the case of stop limit orders, the stop price and limit price need not be identical.]

.02 *A stop order and a stop limit order in option contracts shall be elected as set forth in Rule 154 Commentary .04, and shall also be elected by a quotation as follows:*

A stop order to buy becomes a market order when the bid price in the options series is at or above the stop price, after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when the offer price in the option series is at or below the stop price, after the order is represented in the Trading Crowd.

A stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when the bid price in the option series is at or above the stop price, after the order is represented in the Trading Crowd.

A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when the offer price in the option series is at or below the stop price, after the order is represented in the Trading Crowd.

No stop order or stop limit order elected by a quotation may be executed without prior approval of a Floor Official.

[.16] .03 No change.

[.17] .04 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since the beginning of the Exchange's options program, option specialists have been permitted to accept stop orders and stop limit orders. A stop order to buy (sell) is an order left on the specialist's book which becomes a market order when a transaction in the security occurs at or above (below) the stop price. A stop limit order to buy (sell) is an order left on the specialist's book which becomes a limit order executable at the limit price or at a better price when a transaction in a security occurs at or above (below) the stop price. When a transaction in the security occurs at the appropriate stop or stop limit price, the stop or stop limit order is deemed "elected". Stop and stop limit orders may serve to minimize losses should the market move adversely to an investor's position and may be useful in other strategies as well.

However, under present Exchange rules, the effectiveness of stop and stop limit orders has been curtailed when such orders have been used in connection with inactive option series (e.g., options which are deep-in-the-money). If the value of an option increases or decreases substantially (based upon movement in the underlying security), but no transaction takes place in the option, the quoted market for the option may go through the stop or stop limit price. In such situation, the order would not be elected. Thus, the order would remain unexecuted on the specialist's book and the desired price protection would not be achieved.

To alleviate this situation, the Exchange proposes that stop and stop limit option orders be elected by a quotation as well as by a transaction. This means that a stop or stop limit order that has been left on the specialist's book will become a market

or limit order, respectively, when the quoted market for the option reaches the appropriate bid or offer price, as specified in the text of the proposed rule change in Item I.

The proposal provides that the execution of all stop and stop limit orders elected by a quotation must be approved by a Floor Official. This will protect against the possibility of a specialist electing a stop or stop limit order to exacerbate price movements in the option.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by extending the utility of stop and stop limit orders to minimize investors' losses. Therefore, the proposed rule change is consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors, comprised of members and representatives of member firms, endorsed the proposed rule change.

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 3, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-1044 Filed 1-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21639; File Nos. SR-MCC-84-9 and SR-MSTC-84-8]

Self-Regulatory Organizations; Midwest Clearing Corp. and Midwest Securities Trust Co.; Order Approving Proposed Rule Change

January 8, 1985.

The Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") (collectively, "MCC/MSTC") on October 30, 1984, submitted proposed rule changes to the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). Notice of the proposals was published in Securities Exchange Act Release No. 21509 (November 21, 1984), 49 FR 46854 (November 28, 1984). The Commission received no comment letters. The Commission is approving the proposals.

MCC/MSTC's proposed rule changes would require each broker-dealer applicant for MCC/MSTC membership and each broker-dealer participant¹ to

provide to MCC/MSTC a completed questionnaire² relating to the applicant's or participant's financial and operational status.³ Under the proposals, applicants would be required to file the questionnaire with MCC/MSTC during the application process. Participants would be required to file the questionnaire annually.

MCC/MSTC believes that the requested information will enable MCC/MSTC to monitor more effectively its participants' financial and operational status. Additionally, MCC/MSTC believes that the proposals would allow it to make more fully informed decisions regarding membership admission and would help MCC/MSTC learn in a more timely manner of changes in participants' business mix and ex-clearing financial activities that could expose MCC/MSTC and its participants to greater financial risk. For these reasons, MCC/MSTC believes that the proposals are consistent with Section 17A of the Act. More specifically, MCC/MSTC believes that the proposals facilitate the safeguarding of securities and funds in MCC/MSTC's possession or control or for which it is responsible.

For the following reasons, the Commission believes that MCC/MSTC's proposed rule changes should be approved. The Commission believes that clearing agencies need to be aware of participants' business activities outside the clearing agency environment because such activities may expose clearing agencies and their members to significant financial exposure. The proposals should enable MCC/MSTC to obtain information relating to

¹ Pursuant to MCC Article VIII, Rule 1, Section 3(VI) and MSTC Article V, Rule 1, Section 3(2), MCC/MSTC may require participants to furnish information relating to their business or transactions. Under these rules, MCC/MSTC currently receives FOCUS reports from broker-dealer participants.

² The proposed questionnaire is almost identical to National Securities Clearing Corporation's ("NSCC") questionnaire. The Commission approved NSCC's questionnaire in Securities Exchange Act Release No. 21146 (July 16, 1984), 49 FR 29500 (July 20, 1984). The questionnaire solicits information relating to: (1) "Background Information," e.g., form of organization; date business started; names of officers, counsel and outside accountants; numbers of registered representatives and operational personnel; and banking, service bureau, and clearing arrangements; (2) "Type of Business Conducted," e.g., whether the firm is (a) a stock lender or borrower; (b) a municipal securities broker or dealer; (c) a market maker or underwriter; (d) a commodity futures or commodity options broker; or (e) other designate type of business; (3) Business mix changes, e.g., changing from primarily a government securities to an options business; (4) account structure; (5) market making activities; (6) underwriting activities; (7) "Bonding," i.e., its fidelity bond coverage; and (8) "Pending investigations and/or Litigations," i.e., whether the firm is subject to any pending regulatory action or civil or criminal litigation.

participants' ex-clearing activities and, therefore, should enhance MCC/MSTC's ability to protect itself and its members against financial exposure from such member activities. The Commission also believes that the proposals should give MCC/MSTC more timely notice of changes in participants' business mix that could potentially increase financial risks to MCC/MSTC and its members.

The proposals also elicit additional data that should enable MCC/MSTC to monitor more effectively its participants' financial and operational status. For example, the questionnaire requests information relating to participants' relationships with other parent, subsidiary or affiliate companies. Such information should be useful to MCC/MSTC because the financial condition of those related entities could adversely affect participants' financial status. Additionally, the Commission believes that the proposals should allow MCC/MSTC to make more fully informed decisions regarding membership admission and member monitoring.

The Commission agrees with MCC/MSTC's decision to require all participants to file the questionnaire on an annual basis. The Commission believes that this filing requirement is fair and reasonable to all broker-dealer applicants and members and is consistent with Sections 17A(b)(3)(F) and 17A(b)(4)(B) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-1047 Filed 1-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21637; File No. SR-NSCC-84-14]

Self-Regulatory Organization; National Securities Clearing Corp.

January 8, 1985.

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 November 26, 1984, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

The proposed rule change amends NSCC Rule 4, Section 9 regarding

¹ The proposals apply only to broker-dealer participants. MCC/MSTC plans to develop a similar questionnaire for financial institution participants, e.g., banks.

notification of each member when its clearing fund deposit is greater than NSCC's required deposit.¹ The proposal requires NSCC to notify each NSCC member semiannually about the existence and the amount of any excess clearing fund deposit. The proposal also allows any member to make a written request for this information on a monthly basis. Generally, NSCC will return to a member any excess deposit upon the member's written request.

Previously, NSCC was required to determine clearing fund excesses and to notify the affected member of any such excess each month. NSCC then was required to refund the excess promptly upon a written request from the member. The proposal provides, however, that NSCC will not return an excess clearing fund deposit if NSCC determines that the requesting member's settlement activity during the month of the request has been materially different than in the two previous months.² NSCC states in its filing that the proposal incorporates into its rules an existing policy to withhold clearing fund refunds under these circumstances.

The rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this notice is published in the *Federal Register*. Please refer to File No. SR-NSCC-84-14, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of NSCC.

¹ NSCC states in its filing that it generally bases its clearing fund requirements on each member's settlement activity at NSCC during the prior two months.

² For example, low market activity and settlement activity at NSCC during June and July 1984 caused NSCC's required clearing fund deposits to decrease. In August, however, market and settlement activity increased greatly. NSCC decided that clearing fund refunds would be inappropriate because many members' September 1984 clearing fund requirements would increase substantially.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-1046 Filed 1-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21638; File No. SR-SCCP-84-3 and SR-PHILADEP-84-3]

Self-Regulatory Organization; Stock Clearing Corp. of Philadelphia and Philadelphia Depository Trust Co.; Order Approving Proposed Rule Changes

January 8, 1985.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), Stock Clearing Corporation of Philadelphia ("SCCP") and Philadelphia Depository Trust Company ("Philadep") (collectively, the "Clearing Agencies") filed with the Securities and Exchange Commission proposed rule changes establishing or amending their financial condition and operating capability standards for broker-dealers and banks.¹ Notice of the proposal was published in Securities Exchange Act Release No. 20933 (May 4, 1984), 49 FR 20400 (May 14, 1984). No comment has been received. The Commission is approving SCCP's and Philadep's proposals for the reasons stated below.

I. Description

The proposed rule changes generally establish or improve financial and operational standards for broker-dealers that are applicants or continuing participants. SCCP and Philadep also are proposing separate standards for bank applicants and participants. In addition, the proposals amend the Clearing Agencies' application procedures and expressly specify certain rights and obligations of applicants and participants. Finally, the proposed amendments make various technical, wording, and organizational changes to the Clearing Agencies' rules.²

¹ SCCP's and Philadep's proposed rule change are identical except for the following numbering discrepancies: (1) Philadep's Rule 2, section 2, section 3, and section 4 are renumbered section 5, and section 6; (2) Philadep's Rule 3, section 8 refers to applicants' appeal rights under Rule 24; and (3) Philadep's Rule 4, section 7 relating to notice refers to Rule 2, section 6.

² For example, Rule 2, section 4 has been amended to specify that participants are liable as principal for any of their customers' activities with respect to clearing agency services. In addition, Rule 3, section 2 has been changed to incorporate by reference section 3(a)(3) of the Act.

New Section 3 of Rule 3 is the heart of the proposal. The Section imposes certain financial standards on broker-dealer and bank applicants and participants. The Section requires a broker-dealer applicant or participant: (1) To maintain the minimum net capital required by Rule 15c3-1 (17 CFR 240.15c3-1) under the Act, if applicable; or (2) if Rule 15c3-1 is inapplicable, to comply: (a) With the minimum liquid net asset requirement of the Philadelphia Stock Exchange ("Phlx") or (b) (if the Phlx is not the applicant's or participant's designated examining authority ("DEA")) with its DEA's minimum net capital requirement. Broker-dealer applicants and participants also must furnish directly to the Clearing Agencies copies of their most recent annual, monthly, and quarterly Rule 17a-5 reports, *i.e.*, "FOCUS Reports."

Section 3 of Rule 3 imposes on broker-dealer applicants several special requirements. The clearing Agencies will not admit a broker-dealer applicant to membership if it is: (1) Subject to the early warning provisions of Rule 17a-11 (17 CFR 240.17a-11) under the Act; (2) subject to any restriction or requirement of Rule 326(a)(d) of the New York Stock Exchange, Inc., within 12 months of the date of application to become a participant; (3) subject to "closer-than-normal" surveillance by its DEA; or (4) on the most recent special surveillance list filed by the DEA with the Securities Investor Protection Corporation (SIPC Form 5A). Finally, a broker-dealer applicant must demonstrate at least four consecutive months of profitable business operations immediately preceding the filing of its application. SCCP or Philadep may waive this requirement if one or more principals of the applicant has an established business history as an associated person of a current Phlx floor member.

Section 3 of Rule 3 also establishes minimum capital, profitability, and reporting requirements for bank and trust company applicants and participants. Among other things, these standards require a bank applicant and participant to have at least \$10 million in capital. Alternatively, an applicant's or participant's parent bank holding company must have at least \$10 million in capital and must guarantee the applicant's and participant's obligations to the Clearing Agencies. A trust company applicant or participant must have such capital as the Clearing Agencies may determine to be appropriate in light of the scope and nature of the trust company's business, its projected or actual volume of

securities transactions, and the potential financial exposure to the Clearing Agencies. In addition, a bank or trust company: (1) Must have Federal Savings and Loan Insurance Corporation ("FSLIC") or Federal Deposit Insurance Corporation ("FDIC") insurance or (2) must be a member of the Federal Reserve System. Similar to broker-dealer applicants and participants, bank and trust company applicants and participants must file annual, quarterly, and monthly financial reports.³ In addition, an applicant will not be admitted to membership if it operated at a loss in its most recent fiscal quarter.

The proposals institute several new operational requirements. Rule 3, section 4 requires every applicant or participant to designate an official to supervise all clearing agency related activities. That supervisory official can delegate responsibilities to other persons, provided that those persons, upon the Clearing Agencies' request, must demonstrate adequate training, experience and knowledge of the applicant's or participant's clearing agency related business. Moreover, proposed Rule 3, section 6 requires an applicant's representative to meet with the Clearing Agencies' staff to verify the applicant's application responses, to establish a personal contact with SCCP or Philadep, and to discuss any other concerns. Finally, the proposals require that applicants and participants have personnel capable of handling transactions with the Clearing Agencies consistent with applicable Clearing Agency By-laws, rules and other requirements. Applicants and participants also must have adequate and tested facilities. These facilities must be adequate to fulfill promptly and accurately the applicant's or participant's current and anticipated commitments to, and to meet the operational requirements of, the Clearing Agencies and other participants. The facilities also must conform to any condition or requirement that either SCCP or Philadep reasonably deems necessary for the financial protection of itself and its participant community.⁴

II. Clearing Agencies' Rationale

SCCP and Philadep intend their proposals to establish appropriate

³ If a bank qualifies to participate based on its parent bank holding company's consolidated capital and guarantee, the proposals require both the bank holding company and the bank to file annual, quarterly, and monthly financial reports.

⁴ The proposal also specifically requires applicants and participants to be familiar with SCCP's or Philadep's By-Laws, rules, and operations.

guidelines for evaluating applicants for membership. The Clearing Agencies also believe it essential to impose similar standards on continuing participants to protect against material adverse changes in a participant's financial condition or operational capability.

SCCP and Philadep state that section 17A(b)(4)(B) specifically authorizes them to establish the proposed admission and continued participation standards.⁵ The Clearing Agencies believe that they must exercise this authority to ensure that only financially and operationally sound organizations participate in the Clearing Agencies. Although section 17A(b)(3)(F) prohibits clearing agencies from discriminating unfairly in the admission of participants or among participants in service use, SCCP and Philadep state that their proposed standards are fair to all members and are appropriate to ensure the safeguarding of funds and securities pursuant to section 17A(b)(3) (A) and (F) of the Act.

III. Discussion

The Commission is approving SCCP's and Philadep's proposed rule changes because they should enhance the Clearing Agencies' ability to safeguard securities and funds in their possession or control or for which they are responsible.⁶ For example, the proposed standard imposing a minimum net capital requirement on broker-dealer applicants and participants should help to reduce financial exposure to the Clearing Agencies and their respective solvent participant community from participant default. Moreover, the Commission believes that the proposed standards are consistent with the Act's goals of attaining broad participation in the National Clearance and Settlement System and of protecting clearing agencies from financial exposure through comprehensive financial safeguarding mechanisms, including reasonable membership admission standards.⁷

⁵ Specifically, Section 17A(b)(4)(B) provides that registered clearing agency may deny participation to, or condition the participation of, any person if that person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by clearing agency rules. In addition, a registered clearing agency may examine and verify an applicant's qualifications to be a participant in accordance with procedures established by the clearing agency rules.

⁶ See Sections 17A(b)(3)(B) and 17A(b)(A) of the Act.

⁷ The Clearing Agencies' proposed standards are based on standards adopted by National Securities Clearing Corporation that were approved by the Commission in Securities Exchange Act Release No. 18744 (May 17, 1982), 47 FR 22265 (May 21,

In particular, the proposed net capital standard does not impose any significant restrictions on potential broker-dealer participation in, and access to, clearing agency services. First, the standard's required net capital amounts are identical to existing regulatory requirements.⁸ Second, even if a broker-dealer does not qualify for clearing agency membership, that broker-dealer still could access SCCP or Philadep services through a correspondent relationship with a clearing agency member.

The Commission also believes that SCCP and Philadep have established appropriately tailored bank standards. For example, SCCP's and Philadep's requirement that bank applicants and participants must have \$10 million capital, or that the parent bank holding company must have \$10 million consolidated capital and guarantee the applicant's obligations, should help to ensure that bank applicants and participants are financially able to meet their settlement obligations to the Clearing Agencies. In addition, the Commission believes that the proposals should enable the Clearing Agencies to be better informed of adverse operational and financial changes at bank and trust company participants that could adversely affect the Clearing Agencies and their other participants. This benefit should flow from the requirement that bank and trust company participants, like their broker-dealer counterparts, must file periodic financial and operational reports with the Clearing Agencies.

The Commission thinks that SCCP's and Philadep's amended operational standards should foster efficient securities processing by improving communication between the Clearing Agencies and their members. These standards also should improve participant supervision of clearing related activities. Moreover, the proposal facilitates the early development of communication channels by requiring applicant representatives to meet with Clearing Agency staffs.

1982) and 19181 (October 29, 1982), 47 FR 50597 (November 8, 1982).

⁸ See e.g., Rule 15c3-1 (17 CFR 240.15c3-1). Similarly, requiring participants to directly submit FOCUS reports to the Clearing Agencies, which are already generated for other regulatory purposes, will help to inform the Clearing Agencies timely of changes in financial condition without imposing any important additional administrative burdens. See File No. SR-NSCC-84-6, Securities Exchange Act Release No. 20880 (April 17, 1984), 49 FR 17655 (April 24, 1984), in which NSCC adopted almost identical reporting requirements.

Finally, SCCP's and Philadep's proposals should benefit applicants and participants by clarifying a number of their rights and obligations. For example, the proposal includes provisions regarding: (1) Member's liability as principal for customers transactions; (2) notice effectiveness; (3) appeal rights; (4) discretion in statutory disqualification matters; (5) nondiscrimination in application of the rules; and (6) application procedures.

In summary, the Commission believes that SCCP and Philadep have exercised reasonably their authority to set financial, character, and operational standards that should help to protect the Clearing Agencies and their members from undue risk of financial exposure. At the same time, the proposal will not unfairly discriminate in the admission of participants or among participants in the use of clearing agency services.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with Section 17A of the Act because they will facilitate the safeguarding of securities and funds in SCCP's and Philadep's custody or control or for which they are responsible.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that SCCP's and Philadep's proposed rule changes be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-1045 Filed 1-11-85; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 14307; 812-5995]

The Mitsui Bank of Canada; Filing of an Application

January 8, 1985.

Notice is hereby given that The Mitsui Bank of Canada (the "Applicant"), c/o Peter Figdor, Esq., Wender Murase & White; 400 Park Avenue, New York, New York 10022, filed an application on November 28, 1984, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the Applicant from all provisions of the Act so that it will be in a position to make public offerings of U.S. dollar-denominated certificates of deposit and other debt securities ("Securities") in the United States. 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.

According to the application, Applicant is a Canadian banking corporation licensed under the Canadian Bank Act, that commenced operations as a foreign bank subsidiary under that Act in February, 1982. The Applicant states that all of its outstanding capital stock is owned by Mitsui Bank, Limited ("Mitsui"). Applicant offers wholesale banking services through its head office in Toronto and its branch in Vancouver, including short and medium term commercial lending; deposit-taking; investing in commercial paper, bank instruments and government obligations; discounting trade bills; issuing letters of credit; and foreign exchange trading. As of October 31, 1983, Applicants total assets were equivalent to U.S. \$217,120,954, with authorized capital stock consisting of 200,000 shares of common stock, having a par value of Can. \$100 per share, and paid up capital of Can. \$15,000,000. The Applicant represents that it is extensively regulated under Canadian banking laws. Various aspects of its business, including deposit reserves and insurance, permissible powers, loan volume and dividend policy, are subject to regulation under the Canadian Bank Act. Furthermore, the Applicant is subject to various reporting and accounting requirements and to the supervision of the Canadian Inspector General of Banks, the regulatory authority charged with the administration of the Canadian Bank Act.

The Applicant states that Mitsui ranked as the 20th largest bank in the free world in terms of deposits as of December 31, 1983; as of March 31, 1984, Mitsui had worldwide assets equivalent to approximately U.S. \$78.8 billion, worldwide deposits equivalent to approximately U.S. \$61.7 billion, worldwide customers loans equivalent to approximately U.S. \$40.3 billion, and equity capital equivalent to approximately U.S. \$1.4 billion. Mitsui is presently engaged in the conduct of a commercial banking business in Japan, which includes receiving deposits, making loans, discounts and security investments, conducting domestic and foreign exchange transactions and performing such other related services as safekeeping, money exchange, collections and issuing guarantees, acceptances and letters of credit. Mitsui maintains 198 domestic branches located throughout Japan and engages in

banking activities through branches, agencies and representative offices in 20 other countries, including a branch in New York (The Mitsui Bank, Limited, New York Branch, "Mitsui New York"). The application states that Mitsui is extensively regulated under Japanese banking laws and the regulations promulgated thereunder. The Japanese Ministry of Finance audits Mitsui once every two or three years and the Bank of Japan conducts biennial field checks. The Japanese Ministry of Finance supervises the lending ratios and lending limits of Japanese banks. In addition, the Japanese Ministry of Finance exercises supervisory control over Japanese banks by reason of the necessity of obtaining the approval of the Japanese Ministry of Finance with respect to such matters as the establishment of additional offices, reductions in capital, mergers, liquidations or discontinuations of business. The Japanese Ministry of Finance also has the authority to instruct Japanese banks to remove directors, to direct a Japanese bank to submit certain property to be held for the protection of depositors or to issue such other orders as may be deemed necessary.

The application states that Mitsui has been licensed by the New York State Superintendent of Banks to maintain a branch office in New York State since May 1977 and that, under its present branch license, Mitsui New York is authorized to engage in "the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making loans, or of receiving deposits." Mitsui New York, as a New York branch of a foreign bank, is subject to extensive Federal and New York State regulation. Mitsui New York is also subject to regulation under the International Banking Act of 1978.

The Applicant states that the Securities to be publicly offered by the Applicant in the United States will be sold in minimum denominations of U.S. \$100,000 through major dealers, will be sold only to institutional and other sophisticated investors, will have varying maturities not exceeding two years and will not include any provision for extension, renewal or automatic rollover. Payment of the principal of, and interest on, the Securities will be unconditionally guaranteed by Mitsui New York or Mitsui. The Applicant represents that the Securities will have received one of the three highest investment grade ratings from at least

one nationally recognized statistical rating organization. The Applicant undertakes that, prior to the issuance of any Securities, its United States counsel shall have certified that a rating in accordance with the immediately preceding sentence has been received and is in effect as of such time. The Applicant represents that the Securities will rank *pari passu* among themselves, and the guarantees in respect thereto will rank *pari passu* among themselves; the Securities will rank equally with all other unsecured indebtedness of the Applicant (except indebtedness to Canada or any province thereof, to the extent such indebtedness is preferred by operation of law), including deposit liabilities, and superior to rights of shareholders; and the guarantees of the Securities will rank equally with all other unsecured indebtedness of Mitsui New York or Mitsui, as the case may be (except to the extent such indebtedness is preferred by operation of law), including deposit liabilities, and superior to rights of shareholders.

The Applicant undertakes that any offering in the United States of Securities will be made only pursuant to a registration statement under the Securities Act of 1933 ("1933 Act") or pursuant to an applicable exemption from the registration requirements of the 1933 Act. The Applicant further undertakes that any such offering will be done on the basis of disclosure documents that are appropriate and customary for such registration or exemption, and in any event at least as comprehensive as those used in offerings of similar securities in the United States by United States issuers, and which includes a memorandum describing the business of Mitsui and the Applicant and containing the most recent publicly available annual financial statements of Mitsui and the Applicant (including a balance sheet and income statements), audited in accordance with Japanese and Canadian accounting principles, respectively. Such memorandum will include brief paragraphs highlighting the material differences between generally accepted accounting principles applicable to United States banks and (i) Japanese accounting principles applicable to Japanese banks and used by Mitsui and (ii) Canadian accounting principles applicable to Canadian banks and used by the Applicant. Such memorandum will be updated promptly to reflect material changes in the business and financial condition of Mitsui or the Applicant. The Applicant further undertakes to ensure that such disclosure documents will be provided

to each offeree who has indicated an interest in purchasing Securities prior to any sale of such Securities to such offeree; except that, in the case of an offering being made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act.

The Applicant also undertakes, in connection with any offering of Securities in the United States, that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any action based on such Securities. The Applicant further undertakes to appoint an agent located in the City and State of New York (which may be Mitsui New York) to accept any process which may be served in any such action. Such consent to jurisdiction and appointment of an agent for services of process will be irrevocable so long as such Securities remain outstanding and until all amounts due and to become due in respect of such Securities have been paid.

The Applicant also undertakes that it will not offer any Security unless (i) it shall have registered such Security pursuant to the 1933 Act, or (ii) if it offers such Security without registration, pursuant to an applicable exemption from registration under the 1933 Act, either it shall have received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, such Security will be entitled to an exemption provided under the 1933 Act, or the Staff of the Commission shall have stated in writing that it will not recommend enforcement action to the Commission under the circumstances of the proposed offering. The Applicant further undertakes that it will not offer any Security (i) in the case of any Security to be guaranteed by Mitsui New York, unless it shall have received an opinion of Japanese legal counsel to Mitsui to the effect that the obligation of Mitsui New York pursuant to such guarantee also constitutes the legal, valid and binding obligation of Mitsui enforceable against Mitsui in accordance with its terms, and (ii) in the case of any Security to be guaranteed by Mitsui, unless Mitsui shall have obtained an order of the Commission pursuant to Section 6(c) of the Act exempting it from all the provisions of the Act in connection with the issuance of such guarantee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 31, 1985, 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.

John Wheeler,

Secretary.

[FR Doc. 85-1043 Filed 1-11-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Arizona; Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 11:00 a.m. on Thursday, January 24, 1985, Arizona Bank Building, 3030 North Central Avenue, Conference Room B, 2nd Floor, Suite 230, Phoenix, Arizona, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 3030 North Central Avenue, Suite 1201, Phoenix, Arizona 85012, telephone (602) 241-2206.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 8, 1985.

[FR Doc. 85-1002 Filed 1-11-85; 8:45 am]

BILLING CODE 8025-01-M

Maine; Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 12:00 noon on Thursday, February 14, 1985, at Hazel Green's Restaurant, 349 Water Street, Augusta, Maine, to discuss such matters as may be presented by members, staff of the

U.S. Small Business Administration, or others present.

For further information, write or call Tom McGillicuddy, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine (207) 622-6382.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 8, 1984.

[FR Doc. 85-1001 Filed 1-11-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP85-1; Notice 1]

Volkswagen of America Inc; Receipt of Petition for Inconsequential Noncompliance

Volkswagen of America, Inc., of Troy, Michigan, ("VWoA") has petitioned to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act for noncompliance with 49 CFR 571.101 Motor Vehicle Safety Standard No. 101 *Controls and Displays*, and with 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*. The basis of the petition is that the noncompliance was inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

The noncompliance affects an as yet undetermined number of 1984 and 1985 Audi 5000S and 5000S Turbo passenger cars ("Audi 5000s" herein) and 1985 Audi 4000S, 4000S quattro, Coupe GT, and Quattro passenger cars ("Audi 4000s" herein).

According to paragraph S5 and Table 2 of Standard No. 101 the brake system display telltale shall be identified with the word "Brake". To the same effect is paragraph S5.3.5(b) of Standard No. 105 which requires failure indicator lamps serving as a common indicator to bear the word "brake". VWoA has labelled the brake telltale lens of Audi 4000s with the International Standards Organization (ISO) symbol for brake failure warning, instead of the requisite word. Similarly, the Audi 5000S shows the ISO symbol rather than the word "Brake" on its informational readout display. NHTSA had proposed use of

the ISO symbol on November 4, 1982 (47 FR 49993) with several others, but chose not to adopt them in the final rule published on July 27, 1984 (49 FR 30191). Audi's design engineers apparently did not realize that the ISO symbol was only a proposal and not a requirement when they engineered the Audi 4000s and 5000s concerned.

VWoA argues that the noncompliance is inconsequential for several reasons. It is aware of no complaints or injuries to customers in the U.S. or anywhere in the world. The symbol is explained in the Operator's Manual furnished with each vehicle. The indicator lamps meet other requirements for such lamps. In the Audi 4000s they light up when the brake fluid is below a predetermined level, and when the parking brake is applied. In the Audi 5000s, the indicator lamp flashes and chimes whenever a predetermined level is reached by brake fluid, by the hydraulic pressure in the brake power assist system, and by the fluid in the power steering/brake power assist unit. The application of the parking brake is indicated by a separate lamp labelled "Brake" meeting the requirements of Standard Nos. 101 and 105. VWoA believes that its noncompliance is technical only.

Interested persons are invited to submit written data, views and arguments on the petition of Volkswagen of America, Inc., described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: February 13, 1985.

(Sec. 103, Pub. L. 93-492, 88 Stat 1470 (15 U.S.C. 1417); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: January 8, 1985.

Barry Felice,

Associate Administrator for Rulemaking.

[FR Doc. 85-992 Filed 1-11-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 8, 1985.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0115

Form Number: IRS Form 1099-MISC

Type of Review: Revision

Title: Statement of Recipients of Miscellaneous Income

Clearance Officer: Garrick Shear (202)

566-6254, Room 5571, 1111

Constitution Avenue, NW.,

Washington, D.C. 20224

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and

Budget, Room 3208, New Executive

Office Building, Washington, D.C.

20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0341

Form Number: ATF Rec 5150/8

Type of Review: Revision

Title: Stills—Notices Registration and Records

Clearance Officer: Howard Hood (202)

566-7077, Bureau of Alcohol, Tobacco

and Firearms, Room 2228, Federal

Building, 1200 Pennsylvania Avenue,

NW., Washington, D.C. 20226

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and

Budget, Room 3208, New Executive

Office Building, Washington, D.C.

20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-981 Filed 1-11-85; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Docket No. 85-2]

Performance Review Board**AGENCY:** Comptroller of the Currency, Treasury.**ACTION:** Notice of Change in Membership of a Senior Executive Service Performance Review Board.**SUMMARY:** This notice announces the new membership of the OCC

Performance Review Board (PRB), pursuant to 5 U.S.C. 4314(c)(4).

EFFECTIVE DATE: January 14, 1985.**FOR FURTHER INFORMATION CONTACT:** Susan T. Tucker, Acting Director, Human Resources, (202) 447-1460, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, SW., Washington, D.C. 20219.**SUPPLEMENTARY INFORMATION:** The membership of the OCC PRB (49 FR 2993, January 24, 1984) has been changed. The current membership is as follows:Michael A. Mancusi, Chairperson,
Senior Deputy Comptroller for
National OperationsH. Joe Selby, Senior Deputy Comptroller
for Bank SupervisionDavid L. Chew, Senior Deputy
Comptroller for Policy and Planning
Richard V. Fitzgerald, Chief Counsel

Dated: January 9, 1985.

C. T. Conover,*Comptroller of the Currency.*

[FR Doc. 85-1007 Filed 1-11-85; 8:45 am]

BILLING CODE 4810-33-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 9

Monday, January 14, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Securities and Exchange Commission	6
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1

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 50, No. 6, Page 1159.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, January 10, 1985.

CHANGES IN THE MEETING: Agenda was revised to delete item 4—Enforcement Matter OS #3669. Listed below is the revised agenda:

Open to the Public

1. Kerosene Heater Status Report

The staff will brief the Commission on the kerosene heater project particularly as it relates to the issue of indoor air quality.

2. Delegation of Review of FOIA Appeals

The staff will brief the Commission on the issue of the delegation of the Commission's authority to decide Freedom of Information Act appeals.

3. Advisory Opinion on Preemption Issues

The Commission will consider a draft advisory opinion which addresses certain preemption issues.

For a recorded message containing latest agenda information call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: January 10, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-1096 Filed 1-10-85; 8:45 am]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 9:30 a.m., Wednesday, January 16, 1985.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Voluntary Standards Policy

The staff will consider a proposed amendment to the Commission's voluntary standards policy. The amendment, proposed on June 19, 1984, concerns Commission support for voluntary standards.

2. Delegation of Review of FOIA Appeals

The Commission will consider delegation of the Commission's authority to decide Freedom of Information appeals.

Closed to the Public:

3. Enforcement Matter OS #5043

The Commission will consider Enforcement Matter OS #5043.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: January 10, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-1097 Filed 1-10-85; 1:34 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: See times below, Thursday, January 17, 1985.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public—8:30 a.m.

MATTERS TO BE CONSIDERED:

1. Commission Staff Briefing

The staff will brief the Commission on various matters.

Closed to the Public—9:30 a.m.

2. Compliance Status Report

The staff will brief the Commission on the status of various Compliance matters.

3. OS #5372

The Commission will consider issues related to OS #5043.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: January 10, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-1098 Filed 1-10-85; 8:45 am]

BILLING CODE 6355-01-M

4

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 11:00 a.m., Thursday, January 31, 1985.

PLACE: In the Board Room, Sixth Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Gravlee (202-377-6677).

MATTERS TO BE CONSIDERED:

Net Worth Requirements of Insured Institutions
Regulation of Direct Investment by Insured Institutions

Dated: January 10, 1985.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-1122 Filed 1-10-85; 2:54 pm]

BILLING CODE 6720-01-M

5

FEDERAL TRADE COMMISSION

TIME AND DATES: 2:00 p.m., Thursday, January 17, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED:

Consideration of staff recommendation to amend Pre-Sale Availability Rule, 16 CFR Part 702, and revise the Guides against Deceptive Advertising of Guarantees, 16 CFR Part 239.

CONTACT PERSON FOR MORE

INFORMATION: Susan B. Ticknor, Office of Public Affairs (202) 532-1892. Recorded Message: (202) 523-3806.

Emily H. Rock,

Secretary.

[FR Doc. 85-1065 Filed 1-10-85; 9:27 am]

BILLING CODE 6750-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 14, 1985, at 450 Fifth Street, N.W., Washington, D.C.

A closed meeting will be held on Tuesday, January 15, 1985, at 10:00 a.m. An open meeting will be held on Tuesday, January 15, 1985, at 3:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioner Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 15, 1985, at 10:00 a.m., will be:

- Formal orders of investigation.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceeding of an enforcement nature.
- Institution of injunctive actions.
- Opinion.

The subject matter of the open meeting scheduled for Tuesday, January 15, 1985, at 3:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss matters of mutual interest, including among other things, beneficial ownership disclosure rules, tender offer regulation and shareholder communications. For further information, please contact Leslie A. Murphy at (202) 272-2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Molinari (202) 272-2467.

Dated: January 8, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-1143 Filed 1-10-85; 3:54 pm]

BILLING CODE 8010-01-M

7

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1344]

TIME AND DATE: 10:15 a.m. (e.s.t.), Wednesday, January 16, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

Approval of minutes of meeting held on December 18, 1984.

Discussion Item

1. Role of the cooperative demonstration farm in today's agriculture.

*Action Items***Old Business Item**

1. Cost classification approaches in the methodology used by TVA in developing cost-of-service studies which are utilized by TVA in the establishment of electric power rates.

New Business Items**B—Purchase Awards**

- B1. Invitation 70-962779—Removal of precipitators and installation of new ductwork at Bull Run Fossil Plant.
- B2. Proposal 57-960111—Furnish labor and material to replace five miles of railroad tract at Gallatin Fossil Plant.
- B3. Req. 62-836639—Replacement moisture separator reheater tube bundles for Sequoyah units 1 and 2.

C—Power Items

- C1. Adoption of supplemental resolution authorizing 1985 Series A power bonds.
- C2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1985 Series A power bonds.
- *C3. New power contract with Memphis Light, Gas and Water Division.
- C4. Agreement with Memphis Light, Gas and Water Division for power supply to the Memphis Naval Air Station.
- C5. New power contract with SKW Alloys, Inc., covering arrangements for power supply for operation of its ferroalloys plant at Calvert City, Kentucky.
- C6. Letter agreement with Big Rivers Electric Corporation providing for TVA to furnish emergency transmission service to Big Rivers' McCracken County Substation.
- C7. Amendment to interconnection agreement with East Kentucky Power Cooperative to modify the settlement provisions for economy interchange.

D—Personnel Items

- D1. Personal services, contact with Pickard, Lowe, and Garrick, Inc., Newport Beach, California, for assistance to TVA in the performance of a probabilistic risk assessment of the Bellefonte Nuclear Plant, requested by Power and Engineering.
- D2. Supplement to personal services contract with DDR International, Atlanta, Georgia, for services related to the

Chattanooga Office Complex, requested by Power and Engineering.

E—Real Property Transactions

- E1. Abandonment of certain easement rights affecting approximately 1.2 acres of Chatuge Reservoir land in Towns County, Georgia—Tract Nos. CHR-427F, -428F, -429F, and -502F.
- E2. Sale of permanent easement to Guntersville Hotel Corporation for construction, operation, and maintenance of a motel affecting approximately 0.03 acre of Guntersville Reservoir land in Marshall County, Alabama—Tract No. XGR-728B.
- E3. Grant of permanent easement to the Tennessee Elk River Development Agency for commercial recreation development affecting approximately 55 acres of Tims Ford Reservoir land in Franklin County, Tennessee—Tract No. XTTMFR-8RE.
- E4. Grant of permanent easement to the State of Tennessee, Department of Transportation, for the construction, operation, and maintenance of a highway affecting approximately 1.0 acre of Kentucky Reservoir land in Decatur County, Tennessee—Tract No. XTGIR-129H.

F—Unclassified

- F1. Agreement No. TV-65541A with the Corps of Engineers (Corps), Memphis District, Department of the Army, covering arrangements for TVA assistance to the Corps in analyzing certain samples that relate to special studies and the monitoring of environmental conditions throughout the Corps' Memphis District.
- F2. Supplement to Agreement No. TV-55140A with Defense Mapping Agency, Hydrographic/Topographic Center, U.S. Department of Defense, for TVA's assistance in an accelerated mapping program.
- *F3. Memorandum of agreement between the Appalachian Regional Commission and the Tennessee Valley Authority for the establishment of a child care center to be located on the campus of Walker College in Jasper, Alabama.
- F4. Contract No. TV-65690A between TVA and Walker College for the establishment of a child development center.
- F5. Amendment to agreement TV 50942A with Electric Power Research Institute, covering arrangements for groundwater transport studies.
- F6. Supplement to interagency agreement No. TV-61855A with the U.S. Department of Energy covering arrangements for development and implementation of a regional biomass program.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr.,

Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

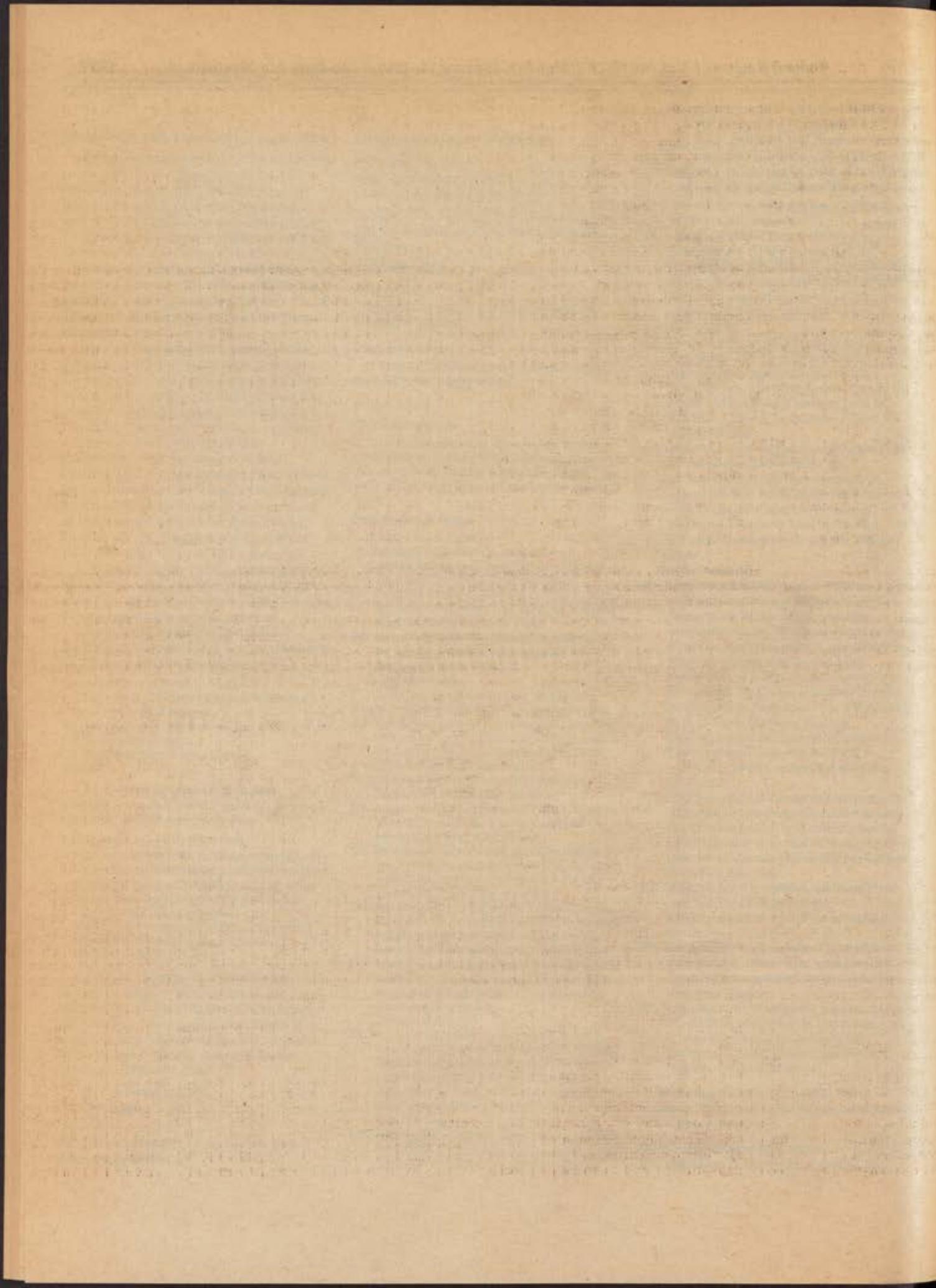
Dated: January 9, 1985.

W. F. Willis,

General Manager.

[FR Doc. 85-1112 Filed 1-10-85; 2:12 pm]

BILLING CODE 8120-01-M



federal register

Monday
January 14, 1985

Part II

Environmental Protection Agency

40 CFR Parts 261, 264, 265, 270, and 775
Hazardous Waste Management System;
Dioxin-Containing Wastes; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, 270, and 275

[SWN-FRL 2701-3]

Hazardous Waste Management System; Dioxin-Containing Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA), by listing as hazardous wastes certain wastes containing particular chlorinated dioxins, -dibenzofurans, and -phenols, and by specifying management standards for these wastes. These wastes are being listed as acute hazardous wastes. Because of this action, we are removing several commercial chemical products from the list of hazardous wastes contained in 40 CFR 261.33, since these listings are duplicative. For the same reason, EPA is revoking the regulation concerning the disposal of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD)-contaminated wastes under the Toxic Substances Control Act (TSCA) when the regulation under RCRA becomes effective. The effect of this rule will be to subject these dioxin-containing wastes to the hazardous waste regulations issued under RCRA.

DATES: *Effective date:* The RCRA hazardous waste regulation becomes effective on July 15, 1985 while the TSCA rule concerning the disposal of TCDD-contaminated wastes is revoked on July 15, 1985.

Compliance dates: All persons (including those who have previously notified the Agency under Section 3010 of RCRA) who generate, transport, treat, store, or dispose of the wastes listed today are required to notify EPA or a State authorized by EPA to operate the hazardous waste program of their activities under Section 3010 no later than April 15, 1985. Notification instructions are set forth in 45 FR 12746 (February 26, 1980).¹

¹ Under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96-452 (October 21, 1980)), EPA was given the option of waiving the notification requirement under Section 3010 of RCRA, following revision of the Section 3001 regulations, at the discretion of the Administrator. In this instance, we believe that all persons handling or managing these wastes need to notify the Agency because of the extreme toxicity of these wastes. Therefore, all persons, including those individuals who have previously notified EPA that they generate or

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) which treat, store, or dispose of wastes listed in these regulations and which qualify to manage these wastes under interim status under Section 3005(e) of RCRA must file with EPA or a State authorized by EPA to operate the hazardous waste program a notification by April 15, 1985 and a Part A permit application by July 15, 1985. Facilities which have already qualified for interim status will not be allowed to manage the wastes listed in these regulations after July 15, 1985 unless: (1) The regulation allows them to handle such wastes under interim status, (2) they file a notification with EPA or an authorized State by April 15, 1985 and (3) they submit an amended Part A permit application with EPA or an authorized State by July 15, 1985 (see 40 CFR 270.10(g)).

ADDRESSES: Public Docket: The public docket for 40 CFR Parts 261, 264, 265, and 270 is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

The public docket for 40 CFR Part 275 is located in Room E-107 at the same address, and is available for viewing during the same hours.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or (202) 382-3000. For technical information contact: Dr. Judith S. Bellin, Office of Solid Waste (WH-562B), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-4787.

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I. Background

On April 4, 1983, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as acute hazardous wastes² certain wastes containing particular chlorinated dioxins, -dibenzofurans, and -phenols, and by specifying certain management standards for these wastes (see 48 FR 14514-14529). Some of these materials already are hazardous wastes under 40 CFR 261.33(f), a provision which lists discarded commercial grade, technical grade, off-specification products, and discarded formulations when the toxicant is present as the sole active ingredient. Since we proposed to list these wastes as acute hazardous wastes, we also proposed to delete several commercial chemical products (i.e., EPA Hazardous Waste Nos. U212, U230, U231, U232, U233, and U242) from the list of hazardous wastes contained in 40 CFR 261.33(f) in order to avoid listing the same waste under two different (and inconsistent) provisions. Finally, EPA proposed to revoke its regulation concerning the disposal of 2,3,7,8-TCDD contaminated wastes under TSCA when the RCRA regulation becomes effective.

EPA requested comments on all aspects of the proposed regulation. The agency has evaluated these comments and has accordingly modified the regulations as well as the supporting documentation. This notice finalizes the regulation proposed on April 4, 1983, and outlines EPA's response to many of the comments received on that proposal. (The Agency's response to the other comments are set forth in the revised Background Document for this listing.) The Agency also notes that the proposed regulation was validated by Congress in the Hazardous and Solid Waste Amendments of 1984 (HSWA). In particular, the bill requires EPA to finalize the "dioxin-containing hazardous waste numbered FO20, FO21, FO22, and FO23 (as referred to in the proposed rule published by the Administrator in the Federal Register on April 4, 1983)" within six months of the bill's enactment (Section 222(a)). In

²The RCRA definition of acute hazardous waste is set forth at 40 CFR 261.11(a)(2). Under that definition, a material is not necessarily "acutely toxic" in the way that term is used by toxicologists. Rather, the term is intended by EPA to identify wastes that are so hazardous that they may, either through acute or chronic exposure "cause, or significantly contribute to an increase in serious irreversible, or incapacitating reversible illness" regardless of how they are managed. Wastes with particularly low LD50 or LC50 toxicities, or wastes containing substantial concentrations of potent carcinogens, are the most likely candidates for listing as acute hazardous wastes (see 45 FR 33106-33107, May 19, 1980).

addition, Section 201(e) of the law requires EPA to consider prohibiting the land disposal of the proposed listings. (The prohibition on land disposal is rebuttable under certain circumstances.)

II. Summary of the Regulation³

This regulation designates as RCRA acute hazardous wastes process wastes from the manufacturing use of tetra-, penta-, or hexachlorobenzenes under alkaline conditions; wastes from the production and manufacturing use of tri-, tetra-, and pentachloro-phenols and their chlorophenoxy derivatives;⁴ and discarded unused formulations containing tri-, tetra-, and pentachlorophenols or formulations containing compounds derived from these chlorophenols. Also listed are wastes that are generated in the course of a manufacturing process performed on equipment previously used for such operations, except where the equipment was used only for the manufacture or formulation of pentachlorophenol (PCP) or its derivatives. The wastes covered by this rule include reactor residues, still bottoms, brines, spent filter aids, spent carbon from product purification, and sludges from wastewater treatment, but do not include untreated wastewater or spent carbon from hydrogen chloride purification.

As a consequence, these wastes will all be subject to the 1 kg per month small quantity generator exclusion limit. See 40 CFR 261.5(e) and 261.30(d). Residues in containers that contain these listed wastes are also regulated under subtitle C of RCRA, unless the container has been triple-rinsed using a solvent capable of removing the waste, or the container has been otherwise cleaned by a method that has been shown to achieve equivalent removal. See § 261.7(b)(3)⁵ In addition, soils

³The following acronyms and definitions are used in this document (and in the Background Document for this regulation):

PCDDs = all isomers of all chlorinated dibenzo-p-dioxins.

PCDFs = all isomers of all chlorinated dibenzofurans.

CDDs and CDFs = all isomers of the tetra-, penta-, and hexachloro-dibenzo-p-dioxins and -dibenzofurans, respectively.

TCDDs and TCDFs = all isomers of the tetrachlorodibenzo-p-dioxins and -dibenzofurans, respectively.

TCDD and TCDF = the respective 2,3,7,8-isomers. The prefixes D, Tr, T, Pe, and Hx denote the di-, tri-, tetra-, penta-, and hexachlorodioxin and -dibenzofuran congeners, respectively.

⁴The proposed regulation specified these derivatives as the chlorophenoxy acids, esters, and amine salts, but omitted reference to ether derivatives and other (e.g., alkaline) salts. This inadvertent omission is rectified in the final regulation.

⁵If the container is cleaned, the container would be considered empty and no longer subject to

contaminated with these wastes are also regulated since soils contaminated by hazardous wastes spills are defined as being in the RCRA system.

These wastes also will be subject to special standards when land disposed, incinerated, or stored. Since these wastes will now be subject to regulation under RCRA, we are also revoking the TSCA dioxin rule.

III. Wastes Subject to This Regulation

EPA proposed to list as acute hazardous wastes process wastes from the manufacture of tetra-, penta-, or hexachlorobenzenes under alkaline conditions; wastes from the production and manufacturing use of tri-, tetra-, or pentachlorophenols and their chlorophenoxy derivatives; and discarded unused formulations containing tri-, tetra-, and pentachlorophenols or formulations containing compounds derived from these chlorophenols. We also proposed to list wastes resulting from the production of materials on equipment previously used for such operations. This section of the preamble discusses the comments received on the listing of these wastes as acute hazardous wastes, as well as our response.

A. Wastes Containing Tetra- and Pentachloro-dibenzo-p-dioxins and -dibenzofurans

In listing these wastes as acute hazardous wastes, EPA relied principally upon the presence, in significant concentrations, of CDDs and CDFs in the wastes, and to a lesser extent on the presence of certain chlorophenols and chlorobenzenes. The CDDs and CDFs are, for certain animal species, the most potent man-made toxicants known. These wastes also have been associated with some of the most serious hazardous waste damage incidents known, including those at Love Canal (NY), and at Times Beach (MO).

The levels of TCDD in these wastes are of concern in terms of the potential for serious harm to human health if they are released to water or air, either in soluble form or adsorbed to soil particulates. Based on its carcinogenic potential, the Water Quality Criterion for 2,3,7,8-TCDD is 10^{-6} - 10^{-7} ppb (U.S. EPA, 1978b). This value is a very small fraction (about 10^{-17}) of the concentration of TCDDs in the listed wastes.

regulation. However, the rinsate that is generated would be an acute hazardous waste, and, thus, subject to regulation. See 45 FR at 78528 (November 25, 1980).

Commenters did not seriously challenge that production wastes containing TCDDs and TCDFs were properly listed. We therefore are adopting these listings as final today. Challenges to EPA's decision to list wastes generated on equipment previously used to produce wastes containing TCDDs and TCDFs are discussed in Section C. of this section of the preamble.

Several respondents, however, did comment on EPA's use of structure/activity relationships in its decision to list all CDDs and CDFs as toxicants of concern, stating that it is not scientifically valid to consider all the CDDs and CDFs as having the same toxicologic properties, and that there are species-specific exceptions to the correlations cited between biochemical endpoints and toxicity. Several commenters also suggested that EPA's reliance on the case of *EDF v. EPA* (598 F.2d 82 (D.C. Cir., 1978)), cited in partial support for EPA's determination, is incorrect. The commenters stated that the court's determination in the case of *EDF v. EPA* (which involved polychlorinated biphenyls (PCBs)) allowed EPA to infer toxicity based on structure-activity relationships because the congener composition of the PCB mixture was not known, and because the toxic characteristic of all the congeners was not known.

EPA agrees with the commenters that there is considerable variation in the acute and chronic toxicity, as well as in the biochemical activity of the various CDD and CDF congeners and isomers. We alluded to these differences in the preamble to the proposal. See 48 *FR* 14515, April 4, 1983. In addition, these differences were noted both in the background document and in the health and environmental effects profiles. However, we continue to judge that, because most of the isomers of the listed CDDs and CDFs are very toxic, albeit to different degrees, and because the Agency believes that most of these wastes contain a certain percentage of the most toxic (TCDD) component, it is appropriate and permissible to rely, in part, on the known structure/activity relationships to establish the potential toxicity of these wastes.⁶

It should also be noted that the Agency is not evaluating the toxicity of the HxCDD and HxCDF congeners—the chlorinated dioxins and -dibenzofurans

most prevalent in wastes from PCP production and manufacturing use—solely by reference to structural similarity with TCDD and TCDF. Rather, we have made an independent assessment of the toxicity of the HxCDDs, and believe that they are also very potent carcinogens, albeit less potent than TCDD. We are, however, relying on structure/activity relationships in stating that all forms of HxCDDs and HxCDFs are constituents of concern.

B. Pentachlorophenol (PCP) Manufacturing Wastes

1. Standards for Determining if Wastes Are Acute Hazardous Wastes

Before challenging the Agency's substantive determinations, some commenters argued that EPA does not have the authority to regulate the designated wastes as acute hazardous wastes under 40 CFR 261.31. In particular, these commenters argue that the criteria cited in the regulation for listing acute hazardous waste (see 40 CFR 261.11(a)(2)) allows EPA to classify as acute hazardous wastes only those wastes which meet *all* of the criteria set forth, and that the criterion that such a waste be "capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness" is impermissibly vague.

We believe that the commenters have misinterpreted the cited regulation. The regulation (40 CFR 261.11(a)(2)) clearly states that a waste is considered to be an acute hazardous waste if its acute toxicity meets the criteria for acute lethality as defined in 40 CFR 261.11(a)(2), *or* if it can cause or contribute to serious irreversible illness. The regulations do not state that an acute hazardous waste must meet *all* of the listed criteria; the conjunction "or" is employed. As to the lack of definitiveness of the qualitative criterion, the regulation quotes the statutory standard verbatim. No one has challenged the statutory provision (Section 1004(5)(A)) as impermissibly vague, nor did we receive any comments on this criteria during the comment period following the promulgation of § 261.11(a)(2) on May 19, 1980. Furthermore, in the preamble to that regulation, EPA stated its intent to apply this standard to wastes "containing substantial concentrations of potent carcinogens . . ." (See 45 *FR* 33107). TCDD and several HxCDDs are among the most potent carcinogens tested in rodents, and are present in these wastes in substantial concentrations. We therefore believe that neither the statute

nor the regulations are impermissibly vague, and that we have fully articulated the reasons for our conclusion that these wastes meet the criterion for listing as acute hazardous wastes.

2. Whether Wastes From the Production and Manufacturing Use of Pentachlorophenol (PCP) Should Be Classified as Acute Hazardous Wastes

EPA proposed to list wastes from the production and manufacturing use of PCP, discarded unused formulations containing PCP, and wastes from equipment previously used for the production or manufacturing use of PCP as acute hazardous waste. Generators of these wastes questioned whether the wastes should be classified as acute hazardous wastes. They argued that these wastes do not contain the most toxic dioxin or dibenzofuran congener (2,3,7,8-TCDD or TCDF), and went on to argue that the dioxin congeners they do contain—HxCDDs—are not carcinogenic or otherwise toxic enough to justify the acute hazardous waste classification. They also maintained that there are no other reasons to justify listing these wastes as acute hazardous wastes.

As already explained, wastes are listed as acute hazardous waste under the criteria for listing contained in 40 CFR § 261.11(a)(2). The principal basis for listing the PCP wastes as acute hazardous wastes is the presence of substantial concentrations of HxCDDs and HxCDFs, and of PCP, which has potential chronic systemic effects.^{7,8} While TCDDs are very rarely found in PCP or in wastes resulting from the production or manufacturing use of PCP (Buser and Bosshardt (1976) reported 0.50–0.25 ppm of an unidentified "TCDD" isomer), HxCDD concentrations range from 1–39 ppm (USEPA, 1981a; Miles et al., 1984). In addition, an isomer-specific analysis determined that the carcinogenic 1,2,3,6,7,8-HxCDD constitutes about 20–60% of the HxCDDs present (USEPA, 1978; Miles et al., 1984). Moreover, PCP contains about 0.12 ppm each of TCDFs and PeCDFs, and from 9–99 ppm of

⁷ Fetotoxic and teratogenic effects (statistically significant skeletal and soft tissue anomalies, fetal growth retardation, and increased embryonic resorptions) have been reported in rats exposed to commercial and purified PCP (USEPA, 1981a).

⁸ These wastes also contain hexachlorobenzene (HCB), a compound identified by the Agency's Carcinogen Assessment Group as a potential human carcinogen. Because the Agency has no data on the concentration of HCB in these manufacturing wastes, HCB is not at this time cited as a toxicant of concern (Appendix VII constituent). If data warrant, these listings may accordingly be amended.

⁶ We also believe that the identification of individual isomers in the waste (i.e., analyze the waste for the specific dioxin and dibenzofuran isomers) would be quite costly and unnecessary because of the toxic nature of the dioxin and dibenzofuran isomers.

HxCDFs (USEPA, 1978). As discussed below (Section III. B. 3.), these levels are of regulatory concern.

Several commenters disputed EPA's determination that the two HxCDDs are carcinogenic. They submitted an expert's review of the bioassay conducted by the National Cancer Institute (NCI) of a mixture of two HxCDDs (Squire, 1983).⁹ The expert reviewer reported a lower incidence of neoplastic nodules in female rats than that reported by NCI (and originally accepted by EPA). He evaluated several of the lesions diagnosed as tumors by NCI as non-neoplastic regenerative nodules, but concluded that there is "equivocal" evidence that these HxCDDs are potential human carcinogens.

As a result of these comments, scientists from EPA's Carcinogen Assessment Group (CAG) and the National Toxicology Program (NTP) have reviewed both the reviewing expert's comments and the underlying data (histology slides) gathered in the original NCI study. Their re-evaluation confirms the original conclusion that there is sufficient evidence that the mixture of HxCDDs studied by NCI is carcinogenic as indicated by a statistically significant increased incidence of liver tumors in female rats and in mice of both sexes (Haberman and Bayard, 1984; Hildebrandt, 1983; McGaughy, 1984). This review led EPA to estimate that the carcinogenic potency of the two HxCDD isomers ranged from 0.59 (male rat) to 11 (male mouse) per $\mu\text{g}/\text{kg}/\text{day}$. The CAG recommended that 6.2 per $\mu\text{g}/\text{kg}/\text{day}$, derived from hepatocellular carcinoma and adenoma data in the male mice and female rats (the test systems in which the response was most strongly evident) be used as the best estimate of the upper limit potency estimate for HxCDD (McGaughy, 1984).

Even the lowest of these estimates, however, makes HxCDD one of the most potent carcinogens identified by the Agency. For example, this mixture of HxCDDs, although about $\frac{1}{2}$ as potent as TCDD, is as potent a carcinogen as Aflatoxin B₁ (a well recognized potent carcinogen), and is about a thousand times more potent than ethylene dibromide (EDB).

Commenters also submitted an epidemiologic study of the effects of several chemical preservatives, including PCP, on the health of woodworkers, as evidence that no deleterious health effects can be

ascribed to these chemicals (AWPI, 1983).¹⁰ EPA reviewed this study, and notes that it has severe limitations (Erdreich, 1983; Ris, 1983). First, a cross-sectional study design is not a suitable method for detecting a cancer effect, because in such a study persons with cancer who are currently employed are not likely to be identified as having the disease. In addition, other deficiencies were pointed out, viz., small sample size; insufficient follow-up period following the onset of exposure; and lack of exposure definition. EPA, therefore, concludes that the submitted epidemiological study is not adequate for assessing the presence or absence of a cancer risk or other health effects in wood treaters exposed to PCP (Erdreich, 1983; Ris, 1983). In addition, reports have been accumulating in the open literature which indicate that workers in occupations associated with PCP exposure are at increased risk of nasal and nasopharyngeal cancer, stomach cancer, and non-Hodgkins lymphoma (Grufferman et al., 1976; Bishop and Jones, 1981; Hardell et al., 1982; Gallagher and Threlfall, 1984). Since these are reports of studies of occupational exposure, it is of course unclear whether the etiologic agent is PCP or its associated CDD or CDF impurities. However, these reports reinforce EPA's decision regarding the capability of these wastes to cause or contribute to serious irreversible, or incapacitating reversible, illness.

Several commenters also suggested that the toxicity of HxCDDs at the levels found in PCP are not of regulatory concern. The commenters argue that, because the amount of HxCDDs which, they estimate, is contained in the median rat lethal dose of PCP is less than the teratogenic lowest observed effect level (LOEL) noted for HxCDDs, EPA should be more concerned with the acute toxicity of PCP than with the chronic toxic effects of its HxCDD contaminants. They further state that no increased risk of oncogenicity will result from HxCDD exposure resulting from exposure to PCP at its NOEL for reproductive effects.

EPA disagrees with these statements. When we consider cancer, daily exposure even at one hundredth of the LD₅₀ of PCP containing 15 ppm of HxCDDs would result in exposure to 18 ng HxCDD/kg/day.¹¹ Lifetime exposure

⁹This review also was submitted well after the close of the public comment period, but the Agency again chose to consider it as part of the rulemaking record.

¹¹ $\frac{1}{100} \times \text{LD}_{50} \times 15 \text{ ppm HxCDD/PCP} \times 1/\text{body weight} = 10^{-2} \times 120 \text{ mg PCP/kg/day} \times (15 \times 10^{-4} \text{ ng HxCDD/mg/PCP}) \times 10^4 \text{ ng/mg} = 18 \text{ ng HxCDD/kg/d} = 0.018 \mu\text{g HxCDD/kg/day}$.

at this level could entail a potential excess cancer risk as high as one in a hundred. With respect to reproductive toxicity, the Allowable Daily Intake (ADI) is estimated as one hundredth (NAS, 1977) of the reproductive NOEL, or 1 ng HxCDD/kg/day. Someone exposed to a dose approaching the median LD₅₀ established in the rat (120 mg PCP/kg/day) therefore would receive a dose 1800¹² times larger than the ADI anticipated for the reproductive effects of HxCDD. Therefore, the reproductive effects of HxCDD potentially occur at doses three orders of magnitude lower than those at which the lethal effects of PCP are expected.

Additionally, the levels of HxCDDs in PCP wastes are of concern in terms of the potential for serious harm if they are released to water or air, either in soluble form, or absorbed to soil particulates. Based on its carcinogenic potential, the Water Quality Criterion for 2,3,7,8-TCDD has been set as $10^{-8} - 10^{-7} \mu\text{g/l}$ (USEPA, 1984b). Since a mixture of two HxCDDs is about 4% as potent a carcinogen as TCDD (McGaughy, 1984), and because the water solubility, soil sorption characteristics, and bioaccumulation potential of HxCDDs and TCDD are very similar (see Background Document for this listing), an appropriate estimate for a similar criterion for HxCDDs is about 25 times as large as that for TCDD, viz., $10^{-7} - 10^{-6} \mu\text{g/l}$. This value is a minuscule fraction (10^{-10}) of the concentration of HxCDDs in the PCP wastes.

We therefore conclude that the potential toxicity of HxCDDs at the levels found in PCP are of regulatory concern and that these wastes contain significant concentrations of potent carcinogens. These wastes therefore meet the criteria of 40 CFR 261.11(a)(2), justifying the listing of these wastes as acute hazardous wastes.

3. Toxicity of PCP as a Measure of the Wastes' Toxicity

One commenter noted that PCP, which is contaminated with carcinogenic HxCDDs, was not carcinogenic in several bioassays, and therefore questioned the Agency's conclusion that the two HxCDDs are potential human carcinogens.

We do not believe that the PCP bioassays are adequate to support a conclusion concerning the potential carcinogenicity of PCP and HxCDD-containing wastes. The carcinogenic risk

¹⁰This review was submitted well after the close of the comment period, but the Agency chose to consider it as part of the rulemaking record.

¹²Exposure/ADI = $(15 \times 10^{-6} \text{ mg HxCDD/mg PCP} \times 120 \text{ mg PCP/kg/d} \times 10^6 \text{ ng/mg}) / 1 \text{ ng HxCDD/kg/day} = 1800$.

of PCP containing ppm concentrations of HxCDD is not expected to give positive results at the dosages used in these bioassays. At the lowest dose used in the HxCDD oral bioassay (1.25 ug HxCDD/kg/day), tumor rates of 0 and 20% were noted in groups of 50 female and male Osborne Mendel rats (USDHHS, 1980). For a dose of 0.3 ug HxCDD/kg/day (the amount of HxCDD contained in the highest PCP dose used in the PCP study) a 0-5% response rate would be expected in the same rat strain. This rate is far too low for reliable detection. Moreover, the two best PCP bioassays (USDHHS, 1980 and Schwetz, 1978) were conducted in rats of different strains, that may differ in response. A review of these and other PCP bioassays also noted procedural deficiencies, such as an inadequate observation period, the use of only one animal species per test, and inadequate numbers of animals (Williams, 1982). Therefore, we believe that these studies do not permit a conclusion as to the potential carcinogenicity of PCP. In addition, as outlined above, there are several reports showing increased cancer risk (of unknown etiology) in occupations associated with PCP exposure. Moreover, the fact that HxCDDs are potential human carcinogens of very high potency renders them of great regulatory concern.

We therefore conclude that, because these wastes contain the potent carcinogen HxCDD at levels of regulatory concern, they meet the criteria of 40 CFR 261.11(a)(2), and are properly listed as acute hazardous wastes.

4. Changing the Regulatory Status of Discarded PCP Formulations

Several respondents commented that EPA does not have the authority to regulate tetra- and pentachlorophenol containing wastes as acute hazardous wastes. These persons called attention to prior RCRA rulemaking involving these compounds.

More specifically, in the hazardous waste regulations published on May 19, 1980, PCP was listed as an acute hazardous waste (§ 261.33(e)) because the Agency was under the mistaken impression that its oral LD50 in the rat was less than 50 mg/kg. When this error was pointed out, the Agency's determination was rectified, and PCP was listed as a hazardous waste under § 261.33(f) (see 45 FR 78533, November 25, 1980). However, EPA's evaluation considered only the acute oral toxicity of PCP, and did not consider its known contamination with CDDs and CDFs. It would not be in the best interests of the

public if EPA allowed a previous determination to go unaltered when additional data show that prior rulemaking was in error. Thus, the regulatory classification of PCP was initially rectified when data seemed to warrant it. In the current regulation, that status is once more changed, because reconsideration of additional data warrant such action.

5. Alternative Basis for Establishing a 1 kg per Month Small Quantity Generator (SQG) Exclusion Limit

In response to the arguments that these wastes are not acute hazardous wastes, we note that we also have an alternative (and independent) justification for a small quantity generator limitation of 1 kg per month for these (PCP) wastes. Under § 261.11(c) of these regulations, EPA may consider the criteria for listing contained in § 261.11 (a)(2) and (a)(3) of the regulations to establish small quantity generator limitations for particular wastes that are lower than 1000 kg per month. EPA will do this where "the general exclusion limits of 1000 kg per month is insufficient to protect human health or the environment." (See Background Document to Section 261.11, May 19, 1980, at p. 60.) That situation is the case for these wastes. As explained in the preamble and the Background Document for the proposed rule, and restated here, these wastes contain significant concentrations of potent carcinogens, and high concentrations of other compounds (HxCDFs and PCP) that are also very toxic. These contaminants have proven to be mobile and persistent in the environment. There also have been many damage incidents involving PCP formulation wastes (see Background Document for this listing). For all these reasons, we believe that these wastes could (and have) cause(d) substantial harm to human health and the environment when managed at unregulated facilities, and that a 1000 kg per month SQG limit is inappropriate for these wastes. In order to ensure that these wastes will be managed at Subtitle C facilities, the appropriate exclusion limit established in the 40 CFR Part 261 regulations is 1 kg per month. This same reasoning applies, with equal force, to the other wastes covered by this listing. The legislative history of the newly enacted HSWA also states unequivocally that these wastes (i.e., all of the wastes covered by the April 4 proposal) are not to be excluded from regulation by virtue of the small quantity generator exemption. See S. Rep. No. 98-284, 98th Cong. 2nd Sess. at 34.

We are making a conforming change to § 261.30(d) of the regulations to indicate that these wastes are subject to the 1 kg. per month small quantity generator limitation. (It should be noted, however, that we read § 261.30(d) as a provision for designating toxic as well as acute hazardous wastes as subject to the lower small quantity generator limits).

6. Regulation of Wastes from Equipment Previously Used in the Production or Manufacturing Use of PCP

Based on the arguments presented above, the commenters also believe that wastes from equipment previously used in the production or manufacture use of PCP should not be regulated as acute hazardous waste. Although we generally disagreed with the specific points of toxicology made by the commenters, we nevertheless have decided not to finalize this provision at this time. In reviewing our data base, we determined that, unlike wastes that are generated on equipment previously used in the production or manufacture use of tri- and tetrachlorophenols or their derivatives, we have insufficient information on the concentration of HxCDDs and HxCDFs in wastes generated on equipment previously used in the production or manufacture use of PCP to determine whether these wastes contain HxCDDs and HxCDFs in sufficient concentrations to be regulated generically as acute hazardous or hazardous waste. As a result, EPA expects to further investigate the wastes that are generated on previously contaminated equipment; based on those findings, we will take appropriate regulatory action. In the meantime, these wastes may still be hazardous waste if they either exhibit one or more of the characteristics of hazardous waste, or if the waste is already listed (or contains a waste listed) in Subpart D of Part 261.

C. Wastes Generated on Equipment Previously Used in the Production and Manufacturing Use of Tri- and Tetrachlorophenols

Several respondents commented on EPA's proposal to regulate, as acute hazardous wastes, wastes resulting from manufacturing processes conducted on equipment previously used to produce tri- and tetrachlorophenols (proposed EPA Hazardous Waste No. F022). These wastes were listed based on sampling and analysis data which show that wastes generated on equipment previously used in the production and manufacturing use of tri- and tetrachlorophenols are contaminated with CDDs even after production shifts

to other products; in many cases, these toxicants have been found to remain in the wastes years after production shifted. In addition, there is a history of environmental contamination resulting from these contaminated equipment wastes at such places as Verona, Missouri, to justify these regulations. Furthermore, there is precedent for listing these wastes in that some of them are currently regulated under 40 CFR Part 775, a regulation issued under Section 6 of the Toxic Substances Control Act (TSCA), based on a finding that unregulated disposal presents an unreasonable risk of injury to health or the environment.

Nevertheless, a number of commenters questioned the scope and practicality of the regulations and suggested several changes.

1. Scope of the Listing

(a) Several commenters felt that the proposed definition of EPA Hazardous Waste No. FO22 was broader than intended by EPA. In particular, they indicated that EPA Hazardous Waste No. FO21 refers only to the *manufacturing use* of certain chlorobenzenes under alkaline conditions, but does not cover the actual production of the compounds themselves. These commenters argue that the proposed listing of FO22 refers to wastes from the production of materials on equipment previously used for the *production or manufacturing use* of materials listed under FO20 and FO21. Thus, the commenters believe that there is an unintended inconsistency in the rules as proposed.

In reviewing these comments, we agree that the proposal erroneously read to include wastes generated on equipment once used to produce chlorobenzenes. Therefore, we have modified the listing to make it clear that the listing only applies to wastes from equipment used previously in the *manufacturing use* of designated chlorobenzenes (under alkaline conditions) [See new hazardous waste listing FO26.]

(b) One commenter argued that the effect of the contaminated equipment listing is extremely broad, and indicates that, while it is not explicitly stated, storage, treatment, and disposal facilities that have ever managed these chlorophenols and chlorobenzenes will be deemed to be part of the "equipment" used to manufacture these products, and thus, be covered under this listing. Consequently, they argue that all waste management facilities in this category would be shut down until full permit status is achieved.

We disagree with the point made by the commenter. As currently drafted, and as discussed in the supporting documentation, this listing applies and is only meant to apply to equipment used in the *actual production or manufacturing use* of the appropriate products (*i.e.*, reactor vessels, distillation columns, filtration equipment, etc.), and does not apply to equipment used by waste management facilities (*i.e.*, treatment, storage, and disposal facilities). The existing TSCA rule (40 CFR 775.183(g)) is likewise so limited. The commenter raises a valid point, however, that needs to be investigated to determine whether the listing should be expanded. EPA will, therefore, investigate the extent of dioxin contamination in wastes (*e.g.*, incineration residues) generated from waste management facilities that previously managed these dioxin wastes. However, until these investigations are completed and a decision is made, this listing will only apply to wastes generated on equipment used as part of the actual production process.

It has also been argued that like the wastes that are generated from manufacturing operations—namely, the production and manufacturing use of tri- and tetrachlorophenols—that have become contaminated from past production or use, the equipment on which these wastes were generated (*i.e.*, reactor vessels, product storage tanks, etc.) when they are taken from service and scrapped (rather than cleaned) should likewise be regulated under RCRA. In fact, extensive TCDD contamination at a scrap metal salvage facility in Newark (NJ) has been traced to the presence of scrapped reaction vessels which, it is thought, were once used for the production of 2,4,5-T. Scrap metal wipe samples, taken many years after the equipment has been scrapped, showed extensive contamination: 250 ng TCDD/m² at the surface of a large reaction vessel in the center of a waste pile. Soil adjacent to cut tanks contained about 3 ppm of TCDD, and low ppb concentrations were detected in surrounding properties (USEPA, 1984). Although situations such as these are of great concern to the Agency, we have decided not to list this equipment, even if discarded, as hazardous (or acute hazardous) waste at this time. EPA has very limited information to define, on a generic basis, *all* equipment which at one time was used to produce tri- or tetrachlorophenols as hazardous (or acute hazardous) waste under RCRA. However, as is the case for residues which are generated from waste

management facilities, EPA plans to study the extent of environmental contamination from this equipment if it were discarded prior to decontamination. Once these investigations are completed, we will take the appropriate regulatory action.

(c) One commenter argued that the regulation regarding contaminated equipment waste should be limited to equipment used during the actual synthetic process and the subsequent purification procedures, since these wastes would tend to have the highest concentrations of CDDs and CDFs. The commenter also suggested that EPA should specifically exclude equipment used for subsequent handling of products in ways which are not expected to generate additional CDDs or CDFs.

We cannot agree that the listing should be limited in this way. While it is true that wastes generated on equipment used in synthesis or purification are expected to contain CDDs and CDFs in concentrations several orders of magnitude higher than in waste generated on equipment used only for formulation, (*i.e.*, several hundred ppm vs. several ppm), the latter levels are still of regulatory concern. Accordingly, EPA has decided that all wastes that are generated on equipment which has become contaminated from previous manufacturing operations must be managed as acute hazardous wastes, unless a delisting petition establishes that a particular waste is not of regulatory concern or should not be considered an acute hazardous waste.

2. Practicality of the Listing

Several commenters questioned the reasonableness of listing as hazardous, wastes that are generated on equipment that may, at any time in the past, have been used in processes generating CDDs or CDFs. They argued that such a listing is not necessary since current cleaning practices (*i.e.*, triple rinsing or other equivalent cleaning methods) will ensure that any wastes generated from such equipment will not be contaminated. They, therefore, suggest that a person be allowed to make such a demonstration. They believe that such a showing could be accomplished by demonstrating that the equipment has been adequately cleaned (*e.g.*, by vapor phase degreasing, solvent washing, etc.), or by testing the waste to determine if it contains significant concentrations of CDDs/CDFs. (The commenters, however, did not indicate how such a demonstration of adequate cleaning would be made, short of testing the waste.) One commenter felt, in any

event, that after some time period during which the equipment has been in another use, the equipment should automatically be considered to no longer be contaminated with CDDs/CDFs. In particular, they suggested a reasonable time period would be three years, as it is common for industry to retain records for this time period.

EPA agrees that persons should be allowed to demonstrate that their waste is no longer contaminated with CDDs/CDFs. However, we believe the only way to make this showing is by testing the waste and submitting an exclusion petition (commonly referred to as "delisting") under 40 CFR 260.20 and 260.22. These procedures have been in use for several years, and we see no reason to set up a special set of procedures. There is no difference between a petition making such a demonstration for these wastes, and petitions to exclude any other waste from the hazardous waste regulations, or petitions to change the regulatory status of a waste from acute hazardous to hazardous.

We do not believe, however, that a showing of equipment cleanliness could easily be made by evaluating the concentration of CDDs and CDFs in equipment rinsate. Such a showing would be very difficult, if not impossible, to make without knowing a great deal of detail for each equipment train, such as its size and complexity, and the amount of rinsate that was used. Even knowing this information, however, may not suffice, because of the many factors that need to be considered to set a standard for CDD/CDF "cleanliness". For example, large equipment trains are difficult to rinse, and the concentration of CDDs and CDFs in the rinsate would depend in part on the amount of solvent used; compliance would therefore be difficult to determine.

In an effort to get additional information on this option, however, we requested the commenter (and several other industrial entities) to provide the Agency with data showing in what manner, and to what extent adequate decontamination of manufacturing equipment might be achieved and demonstrated. We did not obtain a response. Additionally, experience indicates that decontamination is, in fact, very difficult, even if strenuous attempts are made (see, for instance, Bleiberg, 1964; Goldmann, 1973; Dalderup, 1978; Fishbein, 1982; Sambeth, 1983).

We likewise do not believe that enough information is available to set a time period after which wastes that are generated on previously contaminated

equipment should be deemed non-contaminated. Quite the opposite: recent sampling and analysis at a facility which used 2,4,5-TCP almost eight years ago showed ppb concentrations of TCDD in still bottoms from 2,4-DCP manufacture (where the presence of 2,3,7,8-TCDD in such concentrations is not expected, absent contamination from an outside source). We also requested further information from those commenters who made this last point (*i.e.*, set a time period after which the waste is no longer considered to be contaminated with CDD's/CDF's); however, no response was returned, indicating a lack of information to justify setting any time period at this time.

3. Economic Burden

Several commenters argued that this listing will result in economic hardship by requiring premature discarding of "contaminated" equipment, especially to those who prudently cleaned and are reusing the equipment. They believe that such a requirement bears no relationship to whether or not any contaminants may be present and would preclude the use of some very sophisticated and expensive equipment to establish the absence of hazards in wastes that they claim would present no risk.

We disagree with these comments. As discussed above, generators who have cleaned their equipment can show by analysis of their wastes, and a delisting petition, that their wastes do not contain the toxicants of concern at levels that are of regulatory concern. Generators also can dispose of the wastes generated on this equipment as acute hazardous wastes, rather than discarding the equipment (*i.e.*, nowhere in this regulation does the Agency require (or even suggest) that existing production equipment must be scrapped and discarded). In any case, a regulatory impact analysis conducted for this regulation (see Section IX. A. below) has convinced us that its economic burden will be modest. The details of this analysis are discussed in Section IX. of this preamble.

4. Historical Documentation

As part of the proposal, the Agency also solicited comments on the appropriate recordkeeping time periods and types of historical records that should be considered adequate for a showing that equipment was not used for processes generating CDDs/CDFs. Several commenters suggested that three to four years should be set as the typical document retention period. Otherwise, they argue, the approach will

not have much utility, since most corporations will not have the records necessary to make the requisite showing. Regarding the types of records that should be considered adequate, they suggest that production process and product records would supply the necessary information.

In requesting comments in this area, EPA was concerned as to how a generator could legitimately know whether the equipment in question was previously used in these processes. If records are kept for only three to four years, as claimed by the commenters, a generator could question how this regulation could be enforced, *i.e.*, will every generator be required to test their waste to determine whether it is contaminated with CDDs/CDFs if records are not available?

Upon re-evaluation of this point, we now believe this to be much less of a problem than originally thought. More specifically, as part of its preliminary investigations conducted as part of the dioxin strategy, EPA has identified most, if not all, of the manufacturers and formulators of tri- and tetrachlorophenols and their derivatives from the list of registrants who have notified the Agency, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In addition, the Agency, through its Regional Offices, has contacted many of these companies to verify the Agency's information.

Therefore, we believe that those companies who once made these products, and who still use the equipment, will most likely know that this regulation applies to them. The same is true for those who bought equipment from companies that produced or formulated tri- or tetrachlorophenols (or their derivatives), and who knew what type of equipment they bought (*i.e.*, these buyers know that this equipment is contaminated with CDDs and CDFs, and that the resultant wastes are regulated under RCRA). Therefore, the only group of persons who may not know that the wastes they are generating are regulated under these dioxin rules are those who unknowingly bought equipment used to produce or formulate tri- or tetrachlorophenols or their derivatives. This group of individuals may have difficulty in knowing that they are subject to the regulations. However, as indicated above, the Agency has been able to identify most, if not all, companies that produce or formulate these products.

Therefore, any person who suspects that he may have equipment that is contaminated with CDDs or CDFs should contact EPA for further

information. In any event, this list will be useful for any person wishing verification that they are generating dioxin-contaminated wastes. It should also be noted that some of these persons should already be aware of this contamination, since they have been subject to the TSCA rule since May 1980.

D. Hexachlorophene Manufacturing Wastes

One commenter believes that EPA had approximately excluded wastes from the production on Hexachlorophene (HCP) synthesized from highly purified 2,4,5-TCP from the proposed FO20 listing,¹³ but added that, because CDDs and CDFs are not generated in that process, HCP production and formulation wastes should similarly be exempted from the proposed FO22 and FO23 hazardous waste listings.

EPA agrees with the commenter that a similar exception is warranted in cases where such HCP is the only ingredient in the discarded formulation. The regulatory language has been changed to reflect this point. It should also be noted, however, that HCP is itself toxic. Therefore, we anticipate listing HCP manufacturing wastes and discarded formulations which contain HCP as hazardous wastes at some future date.

IV. Management Alternatives and Requirements

A. Land Disposal and Storage of These Wastes

The Agency proposed a degree of hazard approach for these wastes. In light of their inherent danger and previous poor management history, EPA proposed that these wastes be prohibited from being managed at most types of interim status facilities, and that land disposal be conducted pursuant to additional special standards implemented during the course of the permit proceeding. We also requested comment as to whether incinerators, and tank and container storage facilities should be subject to additional management standards when they manage these wastes. This section of

the preamble describes the comments to these proposals, and the Agency's response and changes in approach made in response to comments.

We also note that all of these wastes are specifically identified as candidates for being banned from land disposal in two years under the HSWA (See RCRA amended Section 3004(e)). Thus, the following discussion describes an interim regulatory regime, insofar as it pertains to land disposal of these wastes.

1. Management of the Dioxin Wastes at Interim Status Facilities

a. *Prohibitions on Management.* Several comments related to EPA's decision prohibiting the management of CDD- and CDF-containing wastes at land disposal, incinerator, and open pile storage interim status facilities. Several commenters suggested that interim status facilities that are properly equipped and managed (*i.e.*, that meet the Part 264 standards) should be allowed to manage these wastes. Other commenters suggested that the proposed rules should be changed to allow the incineration of dioxin wastes in interim status incinerators that have approval, under TSCA, to burn PCBs. This suggestion was put forth since the process of gaining fully permitted status under RCRA would take some time. The commenters, therefore, fear that the requirement in the proposed rule would lead to a shortage of available management capacity.

The Agency continues to believe that, for these wastes, management in fully permitted facilities is preferable due to the extreme toxicity of these wastes, the persistence of the toxicants of concern, and the wastes' mismanagement history.¹⁴ At the same time, the Agency is concerned about possible shortages in short-term management capacity for these wastes. We thus reject the suggestion that these wastes should be prohibited from all interim status facilities. We believe that certain types of interim status storage facilities can provide adequate management in the short term. Other interim status facilities, we think, can be evaluated for compliance with the Part 264 standards without undue administrative complication, and so also should not be prohibited from managing these wastes.

We do not believe, however, that interim status land disposal facilities should be allowed to manage these wastes. (There is one exception, for

interim status impoundments in which these wastes are generated.) Not only are the interim status standards insufficient to prevent an unreasonable risk (see 45 FR 32682), but it is very difficult to evaluate these facilities for compliance with the Part 264 standards in the absence of a permit proceeding, because, under today's rule, land disposal facilities must seek approval of a waste management plan.

The only interim status facilities that may accept these wastes are: (a) Impoundments holding wastewater treatment sludges that are created in those impoundments as part of the plant's wastewater treatment system, (b) waste piles that meet the requirements of § 264.250(c) (referred to in this preamble as "enclosed waste piles"), (c) tanks, (d) containers, (e) incinerators if certified, and (f) thermal treatment units subject to regulation under Subpart P of Part 265, if certified. (See next Section for more detailed discussion.) However, we believe it appropriate to discuss here the management of sludges in impoundments in which the waste was created.

For surface impoundments, the Agency has determined that this is a situation when a distinction between new and existing facilities may permissibly be drawn. (See RCRA Section 3004 and 48 FR 14519). If the Agency were to ban all interim status impoundments from managing these wastes, facilities generating wastewater treatment sludges in impoundments would have to build and receive a permit for new capacity before they could legally manage these wastes. As a practical matter, this would require halting the manufacturing process for some undetermined period of time. The short-term management of these sludges in interim status impoundments could be protective, since the CDDs and CDFs will adsorb to the sludges, and other mobilizing organics will be present in these wastes at low concentrations due to dilution and biological treatment (USEPA, 1982).¹⁵ It should also be noted that these facilities also must obtain a Part 264 permit (which includes compliance with the waste management plan), so that management at these impoundments will be upgraded as part of the permitting process. This could

¹³ EPA has re-examined its decision not to list these wastes as acute hazardous wastes, and has developed an engineering analysis for this process. (The document (which contains Confidential Business Information) is available in the docket for this rule making.) Based on this analysis, the Agency believes that wastes from the production of HCP synthesized from highly purified 2,4,5-TCP prepared by the usual route could contain TCDDs. However, since there are no present producers of HCP using this route, the wastes from HCP production are not listed. The Agency is aware of a new route of synthesis for 2,4,5-TCP during which no CDDs or CDFs are formed (CBI information).

¹⁴ We are, however, allowing the residue resulting from the incineration or thermal treatment of dioxin-contaminated soil to go to interim status facilities. See Section VI.C. for discussion.

¹⁵ One facility, that used to produce PCP, estimated that process wastewater could contain various chlorophenols at <100 to >1000 ppm. However, these data are estimates submitted to the Agency, and were not verified by sampling and analysis. Because they differ greatly from sampling data at other facilities, they are judged to be too unreliable for use in the present context.

result, for example, in a requirement that the impoundment not be allowed to receive the wastes unless it is lined, if the permit writer concludes that there is potential for leaching from the impoundment. (See text at FN 26 below.) Thus, interim status impoundments in which these wastes are generated might not be able to continue receiving these wastes indefinitely. In addition, under the new legislation, within four years these impoundments must be upgraded to meet the technical permitting standards for new surface impoundments (subject to certain enumerated exceptions). See RCRA amended Section 3005(j). (These impoundments, however, will not be immediately prohibited from receiving these wastes as a result of this rule.) In light of all of these circumstances, we have decided to allow surface impoundments in which wastewater treatment sludges are generated to continue to manage these sludges.

The suggestion that land disposal facilities which meet the requirements for fully permitted facilities be allowed to handle these wastes is reasonable only in theory. The evaluation process presently needed to ascertain whether a facility meets the requirements of Part 264 would need to be thorough, and EPA judged that, in terms of necessary documentation and public participation, the process of ensuring this fact would be equivalent (or virtually equivalent) to the evaluation needed for issuing a Part 264 permit. This is particularly true for preparing and evaluating the waste management plan. This plan must be discussed with the permit writer; there is no way a facility can be evaluated in advance to determine if they meet this standard. EPA thus believes that there is no reason for either applicants or EPA to go through the permitting process twice.

We generally agree that allowing these wastes to be disposed of only at fully permitted facilities (except as discussed below) will, in the short term, lead to a shortage of facilities able to handle these wastes. This problem will be alleviated, as is the case at present, by the possibility of storage in tanks, containers, or enclosed waste piles at interim status facilities. Such storage will not in the short term be harmful to human health or the environment, and will reduce the pressure to permit a facility to handle these wastes immediately without a full evaluation of the facility's performance. Interim status incinerators will also be allowed to burn these wastes if they can demonstrate compliance with the performance standards for fully permitted incinerators (including destruction and

removal of principal organic hazardous constituents in the waste). Likewise, interim status thermal treatment units can also be approved to handle these wastes.¹⁶ The Agency also may issue emergency permits (see 40 CFR 270.61) to facilities to store these wastes in situations where there is no other realistically available management capacity. For example, if no management capacity is available following a dioxin waste clean up, an emergency permit could be issued to a facility if the alternative is to leave the wastes in place in an unsecure setting.

B. Interim Status Facilities Allowed To Manage These Wastes

Two persons commented on EPA's proposal to allow interim status facilities to handle these wastes. One of them stated that the Agency should, at a minimum, require submission of a Part B application; a demonstration, with respect to surface impoundments, that the wastes will not migrate; and notification to the Regional Administrator on the part of interim status facilities handling such wastes.¹⁷ The commenter further stated that management in unlined impoundments should not be allowed. In view of the fact that we will require a waste management plan for fully permitted land disposal facilities, one commenter also questioned how EPA can allow interim status land disposal facilities to handle these wastes.

As discussed above, EPA agrees that for these wastes, management at fully permitted facilities is preferable. However, as outlined above, pragmatic as well as environmental considerations motivate the Agency to allow interim status facilities to manage some of these wastes for an interim period under some conditions.

In the case of surface impoundments in which the wastewater treatment sludges are generated, we have determined that the manufacturing facilities now generating the listed wastewater treatment sludges would probably have to close down until they

can obtain permits for their impoundments or build alternative treatment facilities. (See 48 FR at 14519.) In addition, and as described above, allowing these interim status surface impoundments to store or treat these wastewater treatment sludges should present a limited risk in the short-term due to the reduced potential of the CDDs and CDFs to migrate into the environment. These impoundments, however, must obtain a Part 264 permit which will include whatever requirements are imposed by the waste management plan.

EPA also judges that interim status tank and container storage facilities provide adequate short term management of these wastes. Although not providing maximum protection, they do provide control of these wastes to prevent them from posing a substantial environmental hazard or an unreasonable risk in the interim; tanks or containers at interim status facilities that will accept these wastes must meet most of the requirements required for fully permitted tank and container facilities. See, e.g., §§ 265.171, 265.173, and 265.174 (containment, management, and inspection of containers) and §§ 265.192 and 265.194 (containment and inspection of tanks).

In addition, the Agency judged that storage in interim status enclosed waste piles also represents a minimal, and acceptable risk. By "enclosed waste pile" we mean a pile that meets the requirements of § 264.250(c)—namely, that the pile is inside a structure that provides protection from run-on, precipitation, and wind dispersal, does not generate leachate, and does not contain free liquids. This regulation allows enclosed waste piles to accept these wastes without first obtaining a permit, because enclosure of this type will guard in the short-term against the exposure pathways of concern (run-off, wind dispersal, and leaching). Allowing this type of interim status facility to accept these wastes should help provide necessary management capacity until disposal facilities receive permits to manage these wastes.

The Agency also believes that interim status incinerators that are evaluated by EPA to determine whether they can meet the performance standards for these wastes contained in § 264.343 will provide adequate protection to human health and the environment (see Section IV, B. 2. for detailed discussion on the use of interim status incinerators to burn these dioxin wastes). Similar considerations justify allowing interim status thermal treatment units subject to regulation under Subpart P of Part 265 to

¹⁶The Agency must provide some legal means of handling these materials while disposal capacity is made available through the permitting program.

¹⁷As already indicated, all persons who generate, transport, treat, store, or dispose of these CDD/CDF-contaminated wastes are required to notify EPA of their activities under Section 3010 of RCRA. It should be noted that the newly enacted HSWA creates statutory deadlines for submission of Part B applications by facilities having interim status. See newly amended Section 3005(e). Under the statute, land disposal facilities must submit applications by November 9, 1985, incinerators must submit applications by November 9, 1986, and all other facilities must submit applications by November 9, 1988. A facility which fails to meet these deadlines will, under the statute, lose interim status.

receive these wastes. (Examples are pyrolysis units not designed as incinerators.) These units will be evaluated the same way as interim status incinerators, and, thus, must be certified as meeting the applicable performance standards in § 264.343 (including the 99.9999% DRE for POHC's in the waste). Procedures for obtaining certification likewise will be the same as for interim status incinerators. Another reason for allowing these interim status thermal treatment facilities to receive these wastes is that there are presently no Part 264 permit standards for these facilities. A prohibition on interim status facilities consequently, would prohibit these facilities from receiving these wastes at all. This result is unwarranted since a means exists to evaluate their compliance with the most important environmental standard, and these facilities may prove to be one of the optimal means of managing these wastes. Managing these wastes at these types of interim status facilities is therefore judged to present minimal risks until final permits are issued.

Several commenters stated that interim status facilities should be allowed to handle wastes containing PCP, since these wastes do not contain TCDD, other CDDs do not pose substantial risks of chronic or acute toxicity, and there is no history of mismanagement of these wastes.

We generally agree that wastes derived from the production or manufacturing use of PCP are unlikely to contain 2,3,7,8-TCDD or other TCDDs or TCDFs at levels of concern. These wastes, however, are likely to contain high concentrations of HxCDDs and HxCDFs—the PCP in these wastes is contaminated with these potent carcinogens. While we agree that these congeners are less toxic than 2,3,7,8-TCDD, we believe them to be sufficiently toxic to warrant the designation of wastes containing these substances as acute hazardous wastes. (The reasons for this determination were outlined earlier in this preamble.)

In addition, there is a substantial history of mismanagement of wastes (including spilled or abandoned formulations) resulting from the use of PCP in wood treatment processes. These wastes, or very similar wastes, have been mismanaged repeatedly, causing very serious damage incidents. There have been many actions under RCRA and CERCLA involving wood treatment facilities using PCP solutions and wood preservation wastes; in addition, there are 22 damage incidents involving these chemicals at sites on the National

Priorities List for Actions under CERCLA. These mismanagement incidents (outlined in the revised Background Document for this listing) include discharge of process wastes into off-site drainage ditches, storage (in most cases for many years) of such wastes in impoundments which were improperly sited, improper storage of treatment solutions in leaky tanks and containers, etc. These mismanagement incidents resulted in PCP contamination of soil, surface water, and ground water; in several instances, this contamination was at very high levels. In one instance, the soil of a residential area surrounding a wood treating facility that mismanaged these wastes was analyzed for HxCDDs and HxCDFs. In four samples, HxCDDs ranged from 1.5 to 12 (average, 4) ppb, while HxCDFs were present at 1.7 to 21 (average 9.5) ppb. The clean up of these contaminated sites can be quite costly.

Because these wastes are very toxic, because the toxic components of the waste are mobile, persistent and (particularly the HxCDDs and HxCDFs) will bioaccumulate, and because of their history of mismanagement, EPA judges that they must be managed at fully permitted facilities when land disposed, incinerated (except as already discussed), or stored in open piles.

2. Requirement of a Waste Management Plan

Several respondents commented on EPA's proposal to require a waste management plan to specify additional requirements for land disposal facilities intending to manage these wastes. Most agreed that such a requirement is desirable. (In fact, one commenter stated that a waste management plan should be required for all management options for these wastes.) However, several respondents stated that a waste management plan would not be adequate to ensure proper handling of these wastes. Still others stated that interim status facilities which meet the Part 264 requirements should be allowed to submit such a plan (and thus be able to handle these wastes) before receiving a final permit.

After reviewing these comments, the Agency still believes that a waste management plan will help provide assurance, as far as is practically possible, that these wastes are properly managed in a land disposal situation. The waste management plan will be the interim vehicle for assuring individualized consideration that the wastes will be managed safely. The plan must be submitted by the owner or operator of the facility as part of the

permit application.¹⁸ Therefore, it will be considered in the normal course of the permitting process, so that no special EPA review procedures are required.

The waste management plan should address the factors mentioned at proposal (see 48 FR at 14520) including waste volume, concentrations of CDDs and CDFs in the waste, aerosol/particulate dispersion, volatilization of the toxicants of concern, soil attenuation properties, waste leaching potential, and anticipated solvent co-disposal. To assist the owner or operator in preparing this document, EPA will provide detailed guidance for the presentation of a waste management plan. This document will discuss the physiochemical properties of the waste constituents, and the specific factors to be addressed for disposal of these wastes at each type of land disposal facility (*i.e.*, land treatment units, surface impoundments, open waste piles, and landfills). The document will explain (1) how the existing Part 264 standards should and can be implemented for these wastes where specific guidance is appropriate (*i.e.* wind dispersal, liner compatibility) and (2) what *new* requirements should be imposed for such wastes (*e.g.* soil types, co-disposal, etc.).

More specifically, this guidance document will address a number of areas where existing regulations already provide adequate control. However, due to the extreme toxicity of the toxicants in these wastes, further guidance is provided to the permit writer and the owner or operator of the land disposal facility on how the existing regulations can be applied to these wastes. For example, the existing management standards under Part 264 are adequate to prevent the dispersion of the CDDs and CDFs by wind dispersal. See §§ 264.221, 264.250, 264.273, and 264.301. However, because of the toxicity of the CDDs and CDFs, the waste management guidance document will provide specific management techniques for controlling this exposure pathway (*i.e.*, immediate cover of wastes when placed in landfills and open waste piles, air monitoring to ensure compliance with this provision, etc.). In addition, the existing regulations already address liner compatibility. See §§ 264.221, 264.251, 264.301, and 264.302. However, the waste management guidance document includes a

¹⁸Sections 270.17, 270.18, 270.20, and 270.21 of the hazardous waste regulations have also been amended to include the specific Part B information requirements concerning the waste management plan that must be included in the permit application for surface impoundments, non-enclosed waste piles, land treatment units, and landfills.

discussion of an advanced liner design system to assist the Region and the owner or operator of the land disposal facility to comply with these provisions.¹⁹

In addition to the existing standards, we believe that additional requirements (for which the existing rules do not address) also need to be considered in land disposing these dioxin-containing wastes. Therefore, the waste management guidance document will discuss the types, the additional factors the permit writers should consider in approving the waste management plan. In particular:

(1) *Co-disposal*—The appropriateness of disposing of the dioxin-containing wastes with other wastes that may increase the solubility of the CDDs and CDFs. In general, we believe that it is more desirable to mono-dispose these wastes.

(2) *Soil Types*—The appropriateness of using various soil types at land disposal facilities. In particular, we believe these wastes should be disposed of in facilities with underlying soil of high sorptive capacity for organic chemicals (*i.e.*, high organic carbon content) and low permeability; this could be accomplished by bringing soils with high sorptive capacity and low permeability to a particular site.

(3) *In-situ Treatment*—The appropriateness of using in-situ treatment, such as mixing with carbon or other sorbents, to minimize the migration potential of the CDDs and CDFs, and the formation of free liquids.

(4) *Liners*—The appropriateness of disposing of these wastes in unlined units. In general, we believe that these CDD and CDF-containing wastes should not be stored or disposed of in unlined units.²⁰ This does not mean that owners or operators of existing facilities will need to retrofit the facility to put in liners. Rather, we expect that the permit writer would preclude placing these wastes in unlined units after a specified date. Permittees wishing to continue placing wastes in the unit would have the option of lining the unit.

With respect to the other comments, we believe that it is neither necessary nor appropriate to require incinerators,

thermal treatment units, tanks, containers, or enclosed waste piles to submit a waste management plan. For incinerators, the requirement (see below) of a trial burn showing 99.9999% (six 9s) destruction and removal efficiency (DRE) is adequate protection for proper incineration of these wastes. The same is also true for thermal treatment facilities. The regulatory requirements for tank, container, and enclosed waste pile storage facilities likewise provide the Agency with sufficient information to evaluate the storage facility's ability to contain these wastes, and the additional requirement for secondary containment for such facilities (see Section IV. A.4. below) provides further protection.

We also do not agree with the suggestion that interim status facilities be allowed to submit a waste management plan and manage these wastes. (See, also, Section IV. A. 1. above rejecting the suggestion that interim status facilities meeting the requirements of fully-permitted facilities be allowed to accept these wastes.) We have determined that interim status facilities, in general, should not be allowed to manage these wastes. In fact, where management at interim status facilities is allowed, EPA expects to issue permits quickly, in order to limit the interim status period. Therefore, the Agency will not allow interim status facilities that have submitted a waste management plan to manage these wastes.

3. Prohibiting Land Disposal of These Wastes

Several commenters suggested that land disposal of these wastes should be prohibited except "in exceptional circumstances." One person, however, felt that a better approach would be to develop a "level of concern" (LOC) above which all dioxin-containing wastes should be prohibited from land disposal; however, the commenter did not specify what such a level should be.

The recently enacted legislation gives the Agency two years to determine whether these wastes should be banned from some or all types of land disposal, except for underground injection in which the Agency has 45 months to make such a decision, and the circumstances under which they should be banned. The Agency has recently initiated a program to explore whether certain hazardous wastes should be restricted from some or all types of land disposal, what the nature of the restrictions should be, and what treatment and recycling alternatives exist for such wastes. CDD/CDF-containing wastes are currently being

examined under this program for possible restriction. For more details on this program, see the Advance Notice of Proposed Rulemaking published on February 15, 1984, at 49 FR 5854. In addition, as discussed in the April 4 proposal for this regulation (48 FR 14521), EPA is considering developing special management standards for CDD/CDF-contaminated wastes in addition to the special standards required by today's rule. It is possible that our investigations may enable us to define concentration limits within which land disposal should be prohibited. However, until these studies are completed, we believe it inappropriate to make any decision with respect to prohibiting these wastes from land disposal.

4. Secondary Containment at Permitted Tank and Container Storage Facilities

EPA solicited comments as to whether secondary containment for tanks that store or treat CDD- and CDF-contaminated wastes should be required as part of their permit. (Interim status facilities would not be subject to this requirement.) As justification, we cited the wastes' toxicity as well as long storage periods, and described mismanagement incidents involving both containers and in-ground and above-ground tanks. Some commenters disagreed with such a requirement and argued categorically that secondary containment requirements at such facilities are not warranted. However, many other commenters argued just as strongly that secondary containment requirements are needed, and urged their adoption.

We have decided that secondary containment should be required as a permit requirement for all tanks that treat or store these wastes presently subject to the existing tank design and operating standards in 40 CFR Part 264, Subpart J, namely above-ground and in-ground tanks, and all underground tanks that can be entered for inspection. It is the Agency's intent to guard against the risks posed by storing or treating these wastes in all types of tanks, including covered underground tanks that cannot be entered for inspection. However, this latter type of tank is not presently subject to the Part 264 Subpart J requirements (see § 264.190(b)) and, as such, cannot receive a permit to treat or store these wastes. In addition, the use of secondary containment at such facilities was not explicitly discussed in the April 4, 1983 proposal. Therefore, we believe we must first solicit public comment on our intent to require secondary containment at covered

¹⁹ It should be noted that this guidance document may also be appropriate for other hazardous wastes that contain similar hazardous constituents (*i.e.*, chlorophenols).

²⁰ As already discussed, we will allow sludges that are generated in interim status surface impoundments (even if unlined) as part of the plant's wastewater treatment system to manage these wastes. These impoundments are subject to all Part 264 standards, however. Thus, the permit writer will address whether it is appropriate for unlined impoundments to continue to receive these wastes.

underground tanks that cannot be entered for inspection that handle CDD- and CDF-contaminated wastes. We intend to address this issue in forthcoming regulations dealing comprehensively with management standards for tanks.

We believe that the secondary containment requirement for the storage or treatment of these wastes in tanks is justified based on the following three considerations: (1) When released into the environment, it is well-documented that these extremely toxic wastes present a substantial hazard to human health or the environment; (2) these wastes may be stored for a long time before a disposal or incineration facility is found that is willing or able to accept them (for example, the same wastes at the Vertac facility have now been stored on-site for nearly ten years); and (3) EPA's experience indicates that these wastes are particularly difficult and expensive to clean up when spilled, and therefore warrant the additional protection afforded by secondary containment.

For the same reasons cited above, we believe that secondary containment should be part of the permit requirements for all facilities that store CDD- and CDF-containing wastes that are not free liquids in containers. (EPA specifically solicited comments on this approach in the proposal, but commenters did not reach a consensus on this issue. Some commenters supported it while others opposed this aspect of the proposal.) Accordingly, all the present requirements for secondary containment will apply to container storage facilities, except for the waiver provision in § 264.175(c). This waiver allows an exemption from the secondary containment requirements for non-liquid wastes, an exception which we believe should not apply to container facilities storing CDD/CDF-contaminated wastes. Rather, we have concluded that all possible releases of these wastes to air, ground water, and surface water from such facilities must be prevented. Therefore, a waiver of secondary containment requirements for containers will not be allowed. A container storage area must have a base which is sufficiently impervious and continuous to prevent spills or leaks of these non-liquid wastes into the environment.

With respect to tanks, we have chosen to implement the secondary containment requirement through a general performance standard. Therefore, the rule does not specify the types of designs for the containment system, but rather requires the owner or operator to choose a design and propose

it in the RCRA permit application for EPA review. Under new § 264.200(a), facilities seeking permits for tanks that store or treat these wastes must have a system designed and operated to detect and adequately contain spills or leaks from the tanks. The design of acceptable containment and detection systems can vary considerably according to the type of tank and other factors, as discussed below.

An example of a containment system that might be acceptable for a tank situated above-ground is one with an impervious base (such as concrete, or a synthetic liner) underlying the tank, and walls or dikes around the tanks that provide containment for at least 100% of the design capacity of the largest tank in the containment area. This is to prevent release of CDD- and CDF-contaminated wastes into the environment from the tank in the event of a complete (worstcase) tank failure. The Agency does not believe that the regulations need protect against the extremely remote possibility of simultaneous multiple tank failures in one containment area. Each containment system must also have a method of mechanical or visual detection that will identify leaks of CDD- and CDF-contaminated wastes from the bottom of the tank.

An example of a containment system that might be acceptable for an in-ground tank is one with a synthetic-type liner underlying the tank, or a liner placed inside the tank so that the tank itself provides the secondary containment. In either configuration, the containment system must be compatible with the wastes being stored, and must be installed and have sufficient strength and thickness so as to prevent failure due to abrasion, pressure gradients, or climatic conditions. A method to detect any leaks between the primary and secondary containment system must also be provided.

An example of a containment system that might be acceptable for underground tanks that can be entered for inspection is a vault structure constructed of material impervious to the wastes being stored in the tank or simply compatible with the wastes and lined or coated with an impervious material. This type of containment system must also have a method to detect any leaks from the tank.

As a general alternative to these examples of containment systems, double walled tanks equipped with an interstitial zone monitoring device to detect leaks that enter the space between the walls would also be

considered acceptable for meeting the new standard prescribed in § 264.200(a).

Today's rule requires tank facilities storing or treating CDD- and CDF-containing wastes to provide EPA with information in its permit application specifying: The precise design of the secondary containment system and its accompanying leak detection method; the choice of construction material and specifications; and whether additional run-on or precipitation controls are needed to preserve the system's integrity. These new technical information requirements are specified in new § 270.16(g) and must be addressed by each individual facility in its RCRA permit application. This information will be evaluated by EPA before a permit is issued.

With the addition of today's secondary containment requirements, we have also decided it is necessary to require tank facilities storing CDD/CDF-containing wastes to address in the facility contingency plan the steps to be taken should a leak be detected. When a leak is detected, the owner or operator must act promptly to prevent release of the hazardous waste into the environment, and wastes must be removed from the secondary containment system as soon as possible. The plan also needs to specify how the tank will be removed from service and repaired, if there is a leak and containment is breached. These new steps are provided in revised § 264.194(c) and build upon the procedures that already must be specified in the contingency plan under existing § 264.194(c).

It should be noted that today's action should not be viewed as a determination by EPA that secondary containment requirements are only appropriate for tanks that store or treat CDD- and CDF-containing wastes. EPA is presently considering whether to require secondary containment for hazardous waste storage and treatment tanks, including tanks that have not yet been permitted and that are presently covered under the existing Part 265 interim status standards. In addition, we are also considering whether to propose several more requirements that we believe are needed to more adequately control the risks posed by all hazardous waste storage and treatment tanks, including those that store or treat CDD- and CDF-containing wastes. For example, EPA is presently evaluating the need for a secondary containment system at all hazardous waste tanks that would provide containment of more than just leaks in the tank's shell. Possible hazardous waste discharges to

the environment that EPA believes may also warrant secondary containment include leaks from nearby tank ancillary equipment (e.g., valves, pumps, and flanges in close proximity to the tank) and spills of hazardous waste in the area immediately surrounding the tank from overflows of the top of the tank or from tank in-filling practices (both caused by equipment failure or operator error). An example of another requirement presently being considered by the Agency is secondary containment for all generators storing or treating hazardous waste in tanks or containers for less than 90 days without a RCRA permit under § 262.34. The Agency believes that leaks and spills at such facilities are no less prevalent than at other RCRA tank facilities and therefore may warrant similar secondary confinement requirements.

B. Incineration of Dioxin-Contaminated Wastes

1. Burning at Interim Status Incinerators

As discussed in the April 4, 1983 proposed rule, EPA does not believe that current regulatory controls on interim status incinerators are sufficient to limit the risks associated with dioxins. Interim status incinerators are not required to meet the performance standards for destruction and removal efficiency, HCl removal, and particulate emissions that are necessary to prevent an unacceptable level of risk from burning these wastes. In addition, they are not subject to the rigorous scrutiny of operating and management procedures that result from the RCRA permit review process. Thus, the final regulations prohibit combustion of these wastes in incinerators that have only interim status.

We have decided, however, to allow interim status incinerators to burn these wastes without first obtaining a RCRA permit if they are certified by the Assistant Administrator for Solid Waste and Emergency Response as satisfying the performance standards in Subpart O of Part 264 for RCRA incinerators burning these wastes.²¹ In addition, there must be an opportunity for public comment on EPA's determination before the determination becomes final.

We are allowing this exception because we think incinerators meeting these conditions are virtually as protective as those receiving Part 264

permits,²² and to provide additional incineration capacity for these wastes until there are more fully-permitted RCRA incinerators. Interim status incinerators that have been approved under the Toxic Substances Control Act (TSCA) to burn polychlorinated biphenyls (PCBs) are a type of incinerator that may wish to apply for certification. As pointed out by commenters, PCB incinerators are a logical choice to burn these wastes without first receiving a RCRA permit because they are required to meet the same performance standard (99.9999% destruction and removal efficiency) that we are requiring for the dioxin and dibenzo-furan-containing wastes, and PCB's, in some cases, are more difficult to incinerate than the dioxins and dibenzofurans. (See Section IV. B. 2. b. below.)

We accordingly are promulgating a new § 265.352(a) stating that RCRA interim status incinerators may burn these wastes if they meet the conditions outlined above. Procedures for applying and obtaining a certification are found in § 265.352(b). Applicants should submit information to the Assistant Administrator for Solid Waste and Emergency Response demonstrating that they can meet the performance standards in Part 264. The most pertinent data is that required by § 270.19(b) and (c), and, if a trial burn is necessary, § 270.62. The Assistant Administrator for Solid Waste and Emergency Response will make a tentative finding whether the applicant can meet the Part 264 performance standards. These tentative findings will be submitted for public comment, and persons in the vicinity will be notified by newspaper announcement and radio broadcast (this last requirement is consistent with the § 124.10(c)(2)(ii) notice procedures for RCRA permits). The comment period will remain open for 60 days. At the end of that time, the Assistant Administrator for Solid Waste and Emergency Response will issue a decision whether or not to certify the incinerator. This decision is final Agency action. Any facility receiving a certification, however, must still obtain a Part 264 incineration permit.

A number of commenters stated that the complexity in complying with the standards in Subpart O and the time required to obtain a full RCRA permit would, in the short term, limit the

locations where these wastes could be incinerated, creating a capacity short fall. We believe that the potential problem should not become severe. First, the wastes to which this restriction applies are generated in relatively small quantities. Secondly, as discussed above, we are allowing interim status incinerators that have been certified by the Assistant Administrator for Solid Waste and Emergency Response to burn these dioxin wastes. Finally, an owner or operator of an interim status incinerator who wishes to incinerate these wastes can speed up the permit process by voluntarily submitting the Part B of their permit application instead of waiting until the permitting official requests that it be submitted. This should reduce the time lag and give more incinerators the capability of burning these wastes.

2. Burning at Fully-Permitted Incinerators

The proposed rule also discussed the management of these wastes at fully permitted incinerators. It was EPA's initial view that burning these wastes in an incinerator which has a proven capability to assure 99.99% destruction and removal efficiency (DRE) for the principal organic hazardous constituents (POHCs) which are as difficult, or more difficult to incinerate than the CDDs or CDFs, was sufficiently rigorous to ensure the proper management of these wastes. However, we specifically requested comments concerning the possibility of requiring a DRE greater than 99.99% when these wastes are incinerated. The Agency also discussed the possibility of requiring special notification to the Regional Administrator when a facility burns these wastes.

a. *Alternative DRE for Dioxin-Contaminated Wastes.* While some commenters were opposed to changing the present DRE requirement, most of the comments focused on more stringent standards, i.e., 99.9999% (six 9s) DRE. The commenters pointed out that six 9s DRE is required of incinerators burning polychlorinated biphenyls (PCBs) (40 CFR 761.70) compounds that are less toxic than the CDDs and CDFs. They argue that, since CDDs and CDFs are among the most toxic compounds known, nothing less than the best achievable performance should be required. In addition, they argued that six 9s DRE will result in the lowest achievable emission rate. Furthermore, one commenter submitted risk modelling data indicating that a large incinerator burning wastes containing 20 parts per million of TCDD with a 99.99% (four 9s)

²¹ It should be noted that some type of test burn data will be required which demonstrates that the incinerator achieves 99.9999% destruction and removal efficiency (DRE) before the incinerator would be certified. See Section IV.B.2.b. below.

²² The only significant difference is that these incinerators would not yet be evaluated to determine if they meet the facility standards in Subpart A through H of Part 264. (Most of these standards, however, are required by the Part 265 interim status standards.)

DRE could result in ambient air concentrations which could present a public health hazard for residents living in the facility's immediate vicinity.

In evaluating these comments, the Agency conducted its own risk assessment in order to determine the potential risks from burning these wastes at different levels of performance in certain hypothetical situations. As part of this analysis, EPA evaluated the potential risks presented by the TCDD content of the wastes, and by the content of total CDDs and CDFs. The latter analysis assumed that the CDDs and CDFs *in toto* have thirty times the carcinogenic potency of TCDD. (This may not be a very conservative assumption, since, for the soot generated in the Binghamton, NY PCB transformer fire, it was estimated that the CDDs and CDFs present had 56 times the carcinogenic potency of TCDD (Eadon, 1982).) If only the HxCDD components are considered, the potential carcinogenic risks are about one twenty-fifth of those calculated for the TCDD component, since that is the ratio of their carcinogenic potencies. The risk to the maximum exposed individual²⁷ and the average exposed individual was then estimated. The variables examined were the concentration of the dioxins in the feed, the size of the incinerator, and the DRE (which ranged from 99.00% to 99.9999%).

The conclusions reached from this effort indicated that wastes containing ppm concentrations of TCDDs, HxCDDs or CDDs/CDFs, burned in large incinerators achieving four 9s DRE could result in ambient concentrations that present a lifetime excess cancer risk level of 10^{-4} . With small incinerators, lower feed rates, lower (ppb) dioxin concentrations, or better meteorological conditions, the modelling showed that four 9s DRE provided levels of risk lower than 10^{-4} .

Based on these results, the Agency considered three options. The first was to establish "acceptable" levels of risk and to use risk modelling on a case-by-

case basis to set limits on the waste concentration or feed rate for each incinerator; the second option was to leave the standard at 99.99% DRE; the third option was to establish a performance standard of six 9s DRE, the current standard for PCB wastes.

The first option is now effectively precluded by statute. See RCRA amended Section 3004(o)(1)(B) stating that facilities receiving permits after enactment of the Hazardous and Solid Waste Amendments of 1984 must at a minimum meet the 99.99% DRE standard. The Agency also rejected the first option because, while it is theoretically more precise from a conceptual standpoint, and allows for tailoring of the regulation to specific circumstances, it is extremely resource intensive for the government, the regulated community, and the interested public. It also requires agreement on the models, assumptions, and acceptable risk levels. Since such modelling is inherently subject to debate, EPA questions its practicality for case-by-case applications in this context.

As described above, a four 9s DRE could result in risk levels for certain situations that are in a range that is of questionable acceptability. Partly because of this, we have decided to impose a more stringent performance requirement of six 9s DRE for CDD/CDF wastes. In addition, this level of destruction and removal is technically feasible. Incinerators burning PCBs are required to operate under conditions that result in six 9s destruction. Consistent destruction to six 9s have been measured at a number of incinerators (e.g., those of SCA, Inc. in Chicago, IL; Rollins Environmental Services, in Deer Park, TX; the facilities operated by Energy Systems Company in El Dorado, AR; and by the General Electric Corporation in Waterford, NY (MRI, 1983; USEPA, 1981c and 1981d)). Similar DRE's are expected to be achievable for CDDs and CDFs, since PCBs, and CDDs, and CDFs have a similar degree of incinerability. (See Table I below.) The second factor is one of general environmental policy. If one is to incinerate waste containing one of the most toxic substances known, one should use the best incinerators operating at their peak capability. (See, for instance, 46 FR at 7686, January 23, 1981.) Several commenters made this point, including a commenter for a facility that incinerates hazardous waste commercially. In addition, the decision is reinforced by our estimate that, in certain situations, the other principal technological option (four 9s DRE) might

not be sufficiently protective of human health.

b. Requirements for Conducting a Trial Burn for These Wastes. One commenter argued that incinerators burning these wastes should be required to demonstrate compliance with the incinerator performance standard for organics by conducting trial burns for dioxins, rather than by using a surrogate Principal Organic Hazardous Constituent (POHC) that is more difficult to incinerate. The commenter also argued that trial burns should be conducted on waste matrices physically similar to those that would be burned.

Although the commenter's point is desirable in theory, determining compliance with a six 9s DRE (or even a four 9s DRE) standard for these wastes would be very difficult, if not impossible, without a system for surrogate POHCs as established in § 264.342. The concentrations of the CDDs/CDFs in these wastes are too low to find measurable amounts in the stack gas (at six 9s DRE) at present limits of detection, and public health considerations preclude, in most cases, "spiking" the waste with higher concentrations of CDDs or CDFs. Therefore, it is not possible to measure and calculate a six 9s DRE using CDDs/CDFs as the principal organic hazardous constituents (POHCs) with the needed accuracy. However, by selecting a POHC in the waste mixture or by spiking the waste with a compound that is more difficult to incinerate than the CDDs and CDFs, and that is present in sufficient concentrations to determine a six 9s DRE, it is possible to use a trial burn to predict compliance with a six 9s DRE for the CDDs and CDFs.

We also agree with the commenter that the waste mixture used for the trial burn should, as nearly as possible, be in the same physical matrix as the wastes to be routinely burned (see § 264.345(b)) indicating that incinerator permits will allow variations in the waste feed physical properties so long as the variations will not affect compliance with the incinerator performance standards, and the waste should be fed into the incinerator at the same rate. For example, if the CDD/CDF wastes that are to be incinerated are contained in a sludge, the trial burn should be conducted on a similar sludge containing the POHC selected to prove compliance. Additional information concerning POHC selection and physical state is contained in the "Guidance Manual for Hazardous Waste Incineration Permits", SW-966 (July 1983).

²⁷ A person who spends 24 hours a day, 365 days a year for 70 years at the site of maximum ground level concentration. This person weighs 70 kg, breathes 20 m³ of air per day, and retains 50% of all contaminants inhaled. It was also assumed that the incinerator burns the waste consistently for the 70-year exposure period, and that "worst case" meteorological conditions would prevail. Obviously, these are conservative assumptions. However, this analysis does not consider other sources of exposure, the possible synergistic effects of concurrent exposures to other carcinogens, or the fact that some of the POHCs, such as chlorobenzenes and chlorophenols, can, in the course of incineration, give rise to CDDs and CDFs. Thus, like all risk assessments, this analysis represents a rough balance of factors relevant to potential injuries.

EPA uses heat of combustion as its incinerability hierarchy. Table I lists the heats of combustion of the CDD and CDF homologues, as well as of PCB homologues and a few compounds commonly selected as POHCs. The lower its heat of combustion, the more difficult a compound is to incinerate.

c. *Special Notification to the Regional Administrator.* In the proposal, EPA considered requiring owners or operators of incineration facilities burning these wastes to notify the Regional Administrator of that fact. Such notification was considered because it was felt that Regional authorities might wish to determine compliance monitoring priorities for facilities incinerating these wastes. Although a few commenters did not believe that a notification requirement is necessary, most of the commenters felt that such a requirement is important, and should be required. The requirement of a six 9s DRE standard for these wastes will, in most instances, require a trial burn and full permit issuance procedures. Thus, the Regional Administrator will, in most instances, be aware that a facility may burn these wastes. However, this is not true in all cases. If an incineration facility has a permit based on trial burn data showing six 9s DRE capability for a substance more difficult to decompose than the CDDs or CDFs (e.g., trial burn data showing six 9s DRE for certain PCBs) there would be no need to inform the Regional Administrator that the facility plans to burn CDD/CDF wastes. EPA will, therefore, require owners or operators of incinerators managing these wastes to notify the Regional Administrator of that fact.

d. *Periodic Compliance Tests.* A few commenters suggested or implied that incinerators burning CDD/CDF wastes should undergo periodic performance verification. Repeating the trial burn on some periodic schedule might be reasonable in cases where strict operating parameters are not established. For example, under the Clean Air Act, a stack could not emit more than some amount of pollutant per given time. No specific operating parameters are established by the regulators, and, instead, periodic compliance checks are conducted.

TABLE I

Compound	Heat of combustion (kcal/gm)
Chlorinated Dibenzo-p-Dioxins Tetra	3.46

TABLE I—Continued

Compound	Heat of combustion (kcal/gm)
Penta	3.10
Hexa	2.61
Chlorinated Dibenzofurans	
Tetra	3.66
Penta	3.40
Hexa	3.07
Chlorinated Biphenyls	
Mono	7.75
Di	6.36
Tri	5.10
Tetra	4.29
Penta	3.66
Hexa	3.26
Hepta	2.96
Octa	2.72
Typical POHCs	
Tetrachloromethane	0.24
Tetrachloroethane	1.39
Hexachlorobenzene	1.79
1,1,1 Trichloroethane	1.99
Pentachlorophenol	2.09

In contrast, during the RCRA permit process, very carefully chosen operating conditions are established in the permit. These conditions, measured during the trial burn, establish the range of operating conditions of the incinerator, within which it has been determined to meet the performance standards of Subpart O. Should it operate outside this range, it would not be in compliance with the standards and would have to stop incinerating the waste. In addition, if the owner or operator wishes to change any of the critical operating parameters, they would have to request a permit modification, and have to conduct another trial burn to prove compliance with the standards under different operating conditions. Therefore, we do not believe it necessary to require periodic testing.

3. Amendments to Parts 264 and 265

Today's notice amends § 264.343 to require that incinerators burning the listed CDD/CDF-containing wastes must achieve a DRE of 99.9999% in addition to the other standards contained in Subpart O. The amendments specify that six 9s DRE will be measured on a POHC that is more difficult to incinerate than the particular CDDs or CDFs. For example, using the heat of combustion hierarchy, and burning wastes containing, for example, HxCDD, a POHC would be selected with a heat of combustion less than 2.81 kcal/gm—perhaps 1, 1, 1, trichloroethane. The permit application procedures in Part 270 and permit issuance procedures in Part 124 are not changed by today's amendment. For a new incinerator (or an interim status incinerator seeking certification), the trial burn plan would show how the unit will be operated so as to comply with the standards in

Subpart O including the requirement for six 9s DRE. EPA expects that the permit for a new incinerator would not allow any of the listed CDD/CDF-containing wastes to be burned until the trial burn is complete and final operating conditions are established. In addition, none of the listed CDD/CDF-containing wastes should be burned during the pre-trial burn and post-trial burn periods described in §§ 264.344 and 270.62 which provide that the Regional Administrator place limits on the feed to the incinerator until assurance is provided that the unit can meet the standards.

If an incinerator already has a RCRA permit, it may burn CDD/CDF wastes (provided the owner or operator has notified the Agency of this fact) if its previous trial burn, or data in lieu of a trial burn, demonstrates a six 9s DRE on a POHC or compound more difficult to incinerate than the CDDs or CDFs in the waste. This may be the case for incinerators that have TSCA permits for PCB destruction. During the trial burn for PCBs, the unit would have had to ascertain six 9s DRE on a specific chlorinated biphenyl, or a compound that is more difficult to incinerate than the chlorinated biphenyl in the waste. If this chlorinated biphenyl or the surrogate is more difficult to incinerate than the CDDs or CDFs in the waste feed, and if it was in the same physical state, another trial burn may not be required. For example, if an incinerator proved six 9s DRE on PCP, which has a heat of combustion of 2.09 kcal/gm, it could incinerate all the CDDs and CDFs, since the CDD/F compound most difficult to decompose is HxCDD with a heat of combustion of 2.81 kcal/gm. However, if the incinerator has not demonstrated six 9s DRE, or it had shown six 9s DRE on a POHC less difficult to burn than the CDDs or CDFs (e.g., tetrachlorobiphenyl (4.29 kcal/gm)), another trial burn would be necessary, and the permit would need to be modified. For additional information see the "Guidance Manual for Hazardous Waste Incineration Permits" (*op. cit.*).

Today's notice also amends § 265.340 to exclude burning of CDD/CDF wastes in incinerators with interim status, except as previously discussed. An interim status incinerator may not burn these wastes until a permit is issued or the incinerator is certified to burn these wastes.

C. Burning at Other Interim Status Treatment Facilities

The Agency also believes that interim status thermal treatment units subject to

regulation under Subpart P of Part 265 are insufficient to limit the risks associated with dioxins, just as they are insufficient to limit risks associated with interim status incinerators (*i.e.*, most of the requirements address administrative rather than technical controls). However, the Agency also believes that means exist to determine their environmental performance. Therefore, we will allow interim status thermal treatment units to be certified if they can demonstrate that they can properly treat these wastes.

Under the existing regulations, these units cannot be permitted since there are no existing RCRA permitting standards. However, such treatment units may provide a very promising way of treating these wastes. In particular, a number of emerging thermal treatment technologies may be used to treat CDD/CDF-containing wastes in order to render them non-hazardous (or at least, less hazardous). Some of these technologies are thought now to be practical, while others are in the pilot stage, and pilot scale field experiments need to be performed. In the absence of RCRA permit standards, such pilot scale research activities would not be allowed. This would stifle and discourage the development of new alternatives and the development of innovative technology for treatment of these very toxic wastes. We believe such an outcome is undesirable.

As a result, we have decided to promulgate a new § 265.383 stating that interim status thermal treatment units may burn these wastes if they are certified by the Assistant Administrator for Solid Waste and Emergency Response that they can properly treat these wastes. These units will be evaluated the same way as interim status incinerators, and thus must be certified as meeting the applicable performance standards in § 264.343 (including six 9s DRE for POHCs in the waste). In addition, the procedures for obtaining certification will be the same as for interim status incinerators (see Section IV, B. 1., above). In particular, the applicant must submit an application to the Assistant Administrator for Solid Waste and Emergency Response which demonstrates that they meet the applicable performance standards in Subpart O of Part 264. The most pertinent data to be submitted is the same as for interim status incinerators, that is the information cited in § 270.19 (b) and (c) and, if a trial burn is necessary, § 270.62. However, since these units are somewhat different than incinerators, additional data and information may be required. See

§ 270.19 (c)(7). Because the type of additional information that may be required will vary with the type of thermal treatment unit, we suggest that the owner or operator of the thermal treatment unit contact the Agency before submitting their application to determine whether any additional information will be required, and if so, what type of data will be needed. This information will then be evaluated for compliance with the appropriate performance standards. The Assistant Administrator's tentative decision will then be published (after public notification) for a 60 day comment period; at the end of that time, the Assistant Administrator for Solid Waste and Emergency Response will issue a final decision whether or not to certify the thermal treatment unit. As with interim status incinerators, this decision is final Agency action.

V. Relation of This Rule to Regulation of TCDD-Contaminated Wastes Under the Toxic Substances Control Act

Many wastes containing TCDD are presently regulated under 40 CFR Part 775, a regulation issued under Section 6 of the Toxic Substances Control Act (TSCA).²⁴ The relationship between that regulation and the rule being promulgated today under RCRA, was discussed at proposal (see 48 FR at 14518). At that time, we stated that the regulation of the treatment and disposal of hazardous wastes properly belongs under RCRA, and that the Agency should avoid overlapping and potentially contradictory approaches to the same problem under different regulatory authority, *e.g.*, TSCA and RCRA. In fact, Section 9(b) of TSCA provides that EPA must utilize its authority under the other environmental laws it administers where these laws are adequate to protect against unreasonable risk, and where there is no strong public interest in taking action under TSCA.

In the proposal, we argued that RCRA provides the appropriate long-term solution for controlling the management of TCDD-contaminated wastes. EPA promulgated the TSCA § 6(a) rule based on a determination that the unregulated disposal of TCDD-contaminated wastes presents an unreasonable risk of injury to health or the environment, and determined that removal for disposal of certain TCDD wastes at Vertac's Jacksonville, Arkansas site would

present an unreasonable risk (see 45 FR 32680, May 19, 1980). We also determined that disposal of TCDD wastes by other persons without prior notification to EPA would present an unreasonable risk. These determinations were reached, in part, because the then existing RCRA regulations for the treatment and disposal of hazardous waste were not appropriate for TCDD-contaminated waste, since EPA had not yet developed final permit standards for the land disposal or incineration of hazardous wastes.

As explained at proposal (see 48 FR at 14518), the general RCRA regulations are now effective, and provide a means for properly evaluating the land disposal and treatment (*i.e.*, incineration) of TCDD-contaminated wastes, thus ensuring that these wastes are managed in a manner that does not present an unreasonable risk. (This also is true of those interim status incinerators and interim status thermal treatment units that are certified to burn these wastes, since these units must be able to meet the same performance standards as fully-permitted incinerators, and must notify and be evaluated by the Agency before they begin burning.) Therefore, when the RCRA dioxin waste rules are effective and the TCDD-contaminated wastes are controlled under RCRA, their disposal will no longer pose an unreasonable risk finding under TSCA. Consequently, we proposed to revoke the TSCA rule when the rule, under RCRA, becomes effective. No one disagreed with this provision of the proposal; in fact, several commenters explicitly agreed that EPA should revoke the TSCA rule. Today's action, therefore, revokes the TSCA Section 6(a) regulation that applies to the Vertac Chemical Corporation, and those that require a sixty-day notification to EPA on the part of persons wishing to dispose of TCDD-contaminated wastes.

VI. Comments on Other Issues

A. Development of a Toxicity Characteristic for Defining Dioxin-Contaminated Wastes as Hazardous

Several respondents commented on EPA's question regarding the advisability, practicality, and desirability of developing a "characteristic" definition of hazardousness under 40 CFR Part 261 for CDD/CDF-containing wastes. Several commenters agreed with EPA that this might not be a suitable regulatory alternative, adding that to set a lower limit of concern might encourage dilution as a means of circumventing regulation. Several others, however,

²⁴ TCDD wastes are defined as those resulting from the production of 2,4,5-TCP or its pesticide derivatives, or substances produced on equipment that was previously used for the production of 2,4,5-TCP or its pesticide derivatives.

stated that a clear indication of a lower level of concern would be a desirable regulatory goal; one commenter suggested what such a lower limit might be, stating that a 1 ppb level in soil might be a suitable level. One other commenter also suggested that a level of concern should be set as a regulatory threshold, but not as a basis for listing.

On reconsideration of the advantages and disadvantages of setting a lower level of concern (LOC) for the toxicants in these wastes, and of the data needed to perform the needed risk assessments, we have concluded that, with the data presently available, it is not possible to make a determination regarding such a level. The matrix variability of these wastes, ranging from still bottoms to filter aids to contaminated soils, is very great, and their specific isomeric composition is not known. It is also very difficult to judge the bioavailability of the CDDs and CDFs in these different matrices. The development of exposure and risk assessments would therefore be extremely difficult in this case, and even more suspect than is usually the case because it would entail even more assumptions than those usually made in such a procedure. Therefore, EPA has not developed a LOC for the toxicants—in particular, the CDDs and CDFs—in these wastes. EPA, however, will continue to explore this alternative as additional information becomes available.

B. Discarded Unused Formulations

This regulation designates as RCRA hazardous wastes discarded unused formulations containing tri-, tetra-, or pentachlorophenol and their derivatives (EPA Hazardous Waste No. FO27), except those discarded as household wastes. In proposing the regulation, EPA solicited comment as to how generators could identify whether these formulations are subject to this regulation.

Two respondents commented on this problem. One person stated that chemical product labels should contain recommendations for disposal; another recommended that EPA coordinate with OSHA to require that OSHA Form 20 (Material Safety Data Sheet (MSDS)) be amended to require disposal information. In particular, they indicated that Section VII. of the MSDS (Spill and Leak Procedures) provides space for the manufacturer's recommendations for disposal of the chemical or its waste residues. They suggest that manufacturers be required to state in this space that the product, when discarded, is a hazardous waste, list the hazardous waste number, and include a

statement concerning the appropriate waste disposal method.

EPA agrees that implementation of these suggestions would go a long way toward solving the problem. If chemical products were identified on the label as an EPA hazardous waste, when discarded, there would be no need to divulge specific (and possibly proprietary) information, and users of such products would not be in doubt that the product in question, when discarded, is subject to RCRA regulation. However, EPA does not have the authority under RCRA to label products and provide disposal information. In addition, form OSHA-20 seldom accompanies a product, and therefore would not solve the problem.

However, EPA possesses authority under other statutes to deal with this problem. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Agency, under the Label Improvement Program, has sent a notice to all registrants [Notice 81-3] indicating to them that pesticide products that are RCRA hazardous wastes, when discarded, must include a statement which indicates that the pesticide (when discarded) is a hazardous or an acute hazardous waste. This requirement becomes effective on January 1, 1985 for all pesticide products except for pesticides discarded by the householder. This same label provision will be required for those pesticide products covered by today's regulation (*i.e.*, for these pesticide products, the label will indicate that they are acute hazardous wastes (EPA Hazardous Waste No. FO27) when discarded. The label will not provide specific instructions as to its disposal, but rather will refer the user or any other person who handles these specific pesticides to contact the EPA Regional Office or the State environmental office for disposal instructions. Thus, the label on all pesticidal products containing tri-, tetra-, or pentachlorophenol or their derivatives, will identify whether the formulation is hazardous, if discarded, and will provide the user with instructions on who to contact if disposal information is necessary.

C. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Clean Up Activities

Several commenters felt that the proposed rule, while beneficial and important, is predominantly slanted toward prevention of future accidental releases of CDDs and CDFs to the environment, rather than cleanup of existing contaminated areas (*i.e.*, Times Beach, MO). The commenters expressed concern that certain portions of the

proposed rules may hinder or prevent remedial action of contaminated sites. For example, incineration of soil with relatively low concentrations of TCDD could be costly to accomplish, and, since the residue of hazardous waste treatment is still a hazardous waste, there would be little incentive to incinerate contaminated soils. Also, permitting a site under RCRA could be very difficult, possibly delaying or preventing remedial action which could be conducted under CERCLA.

While we agree that the proposed rule is slanted toward prevention of future accidental releases of CDDs/CDFs to the environment, we do not agree that this rule will significantly hinder or prevent cleanup of existing contaminated sites. The major waste that is generated at these sites, as implied by the commenter, is soil contaminated with CDDs/CDFs. These soils are acute hazardous wastes, since soil contaminated with hazardous waste spills are defined as being in the RCRA system. See 48 FR 2508, January 19, 1983; see § 261.3(c)(2). Ongoing and anticipated cleanup activities have generated, and will continue to generate, large volumes of soils contaminated with CDDs/CDFs. For instance, it is conservatively estimated that about 500,000 cubic yards of CDD/CDF-contaminated soil will result from CERCLA remedial action activities in Missouri.

The Agency developed a strategy for dealing with dioxin (USEPA, 1983), which, among other things, deals with alternatives for the cleanup of contaminated sites. These alternatives include securing the soil in place, novel remediation techniques (*e.g.*, solvent extraction), incineration, and removal of soil to a secure containment system (*e.g.*, a concrete vault). The Agency has indicated that remediation and enforcement measures under CERCLA will be carried out as expeditiously as possible.

In addition, we are also allowing the disposal of residues resulting from the incineration or thermal treatment of dioxin-contaminated soils at interim status land disposal facilities,²⁰ and to allow treatment, storage, or disposal at facilities pursuant to the usual Part 264 standards (*i.e.*, not meeting the special standards for other dioxin-containing wastes, such as secondary containment or a waste management plan). Although

²⁰ Although the incineration of dioxin-contaminated soils is not practiced to any great extent, EPA plans to investigate this management option for dioxin-contaminated soils, and, in fact, has allocated considerable resources in this area.

there are very few data on the characteristics of the residues resulting from soil incineration, data are available on the incineration of materials such as PCB capacitors and sewage treatment sludges. These data indicate that the residues resulting from such incineration contain PCBs at levels three to four orders of magnitude less than that contained in the original waste before incineration. Most dioxin-contaminated soils contain less than 1 ppm of TCDD. Thus, it is expected that the concentration of this isomer in the residue from the incineration of soils will be less than about 1 ppb. This concentration in soil was determined to be a reasonable level at which to consider limiting human exposure in a residential setting (USDHHS, 1984). We believe the same is true for the other chlorinated dioxin isomers of concern, as well as for the dibenzofurans.

Data on carbon regeneration show similar results. These data indicate that toxicants such as PCBs, that bind strongly to activated carbon or organic carbon can be effectively removed and destroyed from such matrices such that very low levels of the toxicants remain in the resulting residues. There is no reason to doubt that CDDs and CDFs (of similar incinerability) when bound to organic carbon in a soil matrix will behave any differently. We have therefore determined that the residues of incineration or thermal treatment of CDD/CDF contaminated soils, present much less risk than the untreated soils, and thus can be managed at interim status land disposal facilities.²⁶ We have, therefore, provided a special designation (EPA Hazardous Waste No. FO28) for these wastes.

D. Other Wastes Containing CDDs and CDFs

Several respondents commented on the need to list other wastes which contain CDDs and CDFs, *i.e.*, chlorinated benzenes and PCBs, dichlorophenol process wastes, fly ash and emission control dusts from the low-temperature combustion of

chlorophenols, and presently unlisted residues from wood preservation.

The recently enacted HSWA specifically provides additional time to the Agency for evaluating whether to list additional dioxin-containing wastes. See RCRA amended Section 3001(e). As stated in the preamble to the proposed regulation (48 FR 14523), EPA is presently conducting a study on wastes from the production of dichlorophenol. Under EPA's Industry Studies program, the Office of Solid Waste (OSW) has performed engineering analyses, and has gathered sampling and analysis data from several dichlorophenol production facilities, and from facilities that use dichlorophenol. These data are presently being evaluated. In addition, under Tier 4 of the "Dioxin Strategy" (USEPA, 1983), EPA is investigating possible combustion sources of CDDs and CDFs. These materials will be listed if evidence demonstrates that they are indeed hazardous (or acute hazardous) wastes. We also have begun investigating whether additional wastes from wood preservation processes using PCP should be listed as hazardous (or acute hazardous) wastes, and whether CDDs and CDFs should be added as constituents of concern in the wood preservation process waste already listed (EPA Hazardous Waste No. K001, Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol). After completion of those studies, we will take regulatory action, if warranted.

With respect to wastes resulting from the manufacturing use of chlorobenzenes, such processes are not expected to generate CDDs or CDFs except under alkaline conditions and elevated temperatures. We therefore judge that these processes are adequately covered by the present listings. It is possible that commercial preparations of mono- and dichlorobenzene (which are not covered by today's listing) contain homologues with higher degree of chlorination, and thus could give rise to CDDs and CDFs at levels of concern. If further investigation proves that this is the case, we will list the wastes from such processes.

With respect to PCBs, we agree that CDDs and CDFs may well occur in processes involving these materials. However, PCBs are no longer manufactured in the U.S., and their use and disposal are currently regulated under TSCA (40 CFR Part 761). The major problem at present is the generation of CDDs and CDFs resulting from transformer fires. The regulation of

the disposal of the wastes (including soot) from such fires is presently being studied under the dioxin strategy, and EPA recently proposed a regulation intended to control the potential hazards resulting from PCB transformer fires (see 49 FR 39966-39989, October 11, 1984).

E. Wastes Containing Other Halogenated Dioxins and Dibenzofurans

Two respondents commented that EPA should not limit its consideration to processes which are expected to generate tetra-, penta-, or hexachlorinated dioxins and -dibenzofurans, because the brominated analogues are also of great concern in terms of their potential to harm human health, and because the congeners of higher degree of chlorination can undergo dechlorination in the environment.

We agree that the brominated analogues are a potential threat. EPA has investigated whether there are at present manufacturing processes generating these toxicants. It was determined that there are at present no U.S. manufacturers of the brominated chemicals (bromophenols, bromophenoxy derivatives, brominated biphenyls) which are expected, from knowledge of chemical reaction, to be contaminated with brominated dioxins and -dibenzofurans. We are continuing to investigate, however, whether there are users (formulators) of such compounds. We are also evaluating other organobromine manufacturing processes. If warranted, we will list wastes from such manufacturing operations, and will include brominated dioxins and -dibenzofurans as toxicants of concern.

With respect to the higher chlorinated dioxins, we agree that dechlorination occurs. However, it is very difficult to predict the extent of this process, and the equilibrium composition of the various isomers. Both photochemical synthesis and degradation of CDDs and CDFs can occur under ambient conditions. The photochemical formation of OCDDs from PCP has been shown to occur, both in solution, and on PCP-treated wood (Crosby et al., 1973; Crosby and Wong, 1978; Lamparsky, 1980). Resistance to degradation increases with degree of chlorination (Hutzinger, 1973; Crosby, 1973; Desideri, 1979; Dobbs and Grant, 1979; Nestruck, 1980). In most situations, photodegradation by reductive photodechlorination exceeds photosynthetic processes, and reaction routes and rates are dependent on reaction conditions. Rate constants

²⁶ Other dioxin-containing wastes are expected to contain much higher concentrations of the dioxins and dibenzofurans. Therefore, we would expect the residue from the incineration of these wastes to also contain much higher concentrations of the dioxins and dibenzofurans. Consequently, we believe that all other incineration residues should be managed as acute hazardous wastes and comply with the special management standards. However, any person may petition the Administrator (under §§ 260.20 and 260.22) to exclude their waste from regulatory control (or at least argue that the waste should not be considered an acute hazardous waste) if they can demonstrate such facts in their petition.

show that this process is a relatively minor pathway for the destruction of the octa-, hepta-, and hexachlorodioxins, accounting for less than 10% of octachlorodioxin destruction (Dobbs and Grant, 1979). Unidentified compounds with gas chromatographic retention times longer than that of OCDD are also formed. While photodechlorination can occur rapidly in solution under laboratory conditions, it can be slow in soil, or on leaves (Crosby, 1977). Contradictory results have been obtained in the laboratory experiments on photodegradation in the adsorbed state (Crosby, 1977; Wong, 1978). When degradation does take place, however, the congeners produced are usually those of less toxic concern. Although displacement of chlorine atoms *ortho* to the oxygen atoms does occur (Buser, 1979; Crosby, 1973; Lamparski, 1980), most investigators have noted that the lateral halogen atoms are the most labile (Stehl, 1971; Dobbs and Grant, 1979; Nestrick, 1980). Therefore, the 2,3,7,8-substituted isomers are those most likely to degrade. Thus, the photodegradation of highly chlorinated CDDs and CDFs is not likely to generate the less chlorinated isomers of most toxic concern. We therefore conclude that, in view of present knowledge, the regulation of wastes containing tetra-, penta-, and hexachlorodioxins and -dibenzofurans adequately address our present regulatory concerns.

F. Small Quantity Generator Comments

Several respondents commented that this regulation constitutes an excessive and unwarranted regulatory burden. One commenter stated that because of the limited disposal options small quantity generators now exempt from regulation would need to apply for status as storage facilities. One person argued that EPA must show a "sound basis" for the 1 kg/month small quantity generator limitation for these wastes.

EPA does not agree with the comments stating that this regulation represents an unreasonable burden on the regulated community. The economic impact analysis performed for this regulation (see Section IX.) determined that the costs incurred by this regulation are extremely modest (about eight million dollars per year, maximum).²² When compared with the costs of cleaning up the mismanaged wastes (more than thirty million dollars for Times Beach, MO, alone) this modest economic burden is entirely warranted. Moreover, the economic analysis did not

consider that many generators may already be covered by RCRA or TSCA regulation, and that the disposal of some of the listed formulations (those in which the listed chlorophenols or their derivatives are sole active ingredients) is already regulated under § 261.33 of RCRA. Additionally, because of their inherent value, we do not believe that the regulated community will usually discard substantial quantities of these formulations.

With respect to the comment that EPA must show a basis for the 1 kg/month small quantity generator limitation, this comment was previously discussed in Section III. B. 5. above.

G. Comments on Reuse and Recycling Issue

Several commenters stated that the provisions in the proposed regulation which would list and regulate these wastes as hazardous wastes would prohibit their reuse and recycling. This was said to be at odds with the recycling objectives of RCRA. Two commenters suggested that EPA should allow on-site recycling and reuse of the listed wastes without regulation.

Most of the comments concern issues which are part of a different rulemaking proceeding, amending the existing definition of solid waste and establishing management standards for hazardous wastes that are recycled. See 48 FR 14422, April 4, 1983 proposing these rules. Thus, we will address those comments in finalizing that rulemaking. We note, however, that nothing in this proposal or in existing rules would prohibit recycling of these wastes. Rather, these wastes would remain subject to regulation when they are to be recycled.

H. Applicability of the Mixture Rule

One commenter questioned whether, and to what extent, surface water runoff and plant sweepings would be considered hazardous waste under the mixture rule. As stated in § 261.3(c)(2), precipitation run-off is not automatically considered a hazardous waste, but plant sweepings which contain an acute hazardous waste are residues of cleanup operations, and would be considered to be acute hazardous waste, unless put to direct use as a pesticide or incorporated back into product.

I. Comments on the Analytical Method and the Background Document

Several respondents commented on the proposed analytical method for CDDs and CDFs. In general, these persons commented on specific details of the method, such as the need for sample preservation, the size of the

specified extraction vessels, the suitability of the chromatographic substrates, the appropriateness of the calibration standard, and quality control procedures. Several comments were also received on the Background Document for this listing. These comments are responded to in detail in the Background Document for this listing. Where appropriate, the analytical method (see Appendix IX to Part 261 of this notice) and the Background Document have been modified.

VII. Relation of This Regulation to Those Promulgated Under CERCLA Section 102(b) (Reportable Quantities)

All hazardous wastes (or, in this case, acute hazardous wastes) included in today's final rule automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA Section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center (NRC) or the release. (See CERCLA Section 103.) Except for those substances already on the list of CERCLA hazardous substances, which will retain the RQ already assigned, all hazardous wastes designated under RCRA will have an RQ of one pound, until adjusted by regulation under CERCLA. See Section 102.

If a waste has more than one constituent of concern, the lowest RQ assigned to any one of the constituents present in the waste represents the RQ for the waste. If a person completely analyzes the waste, however, and determines that the RQ for each of the constituents of concern are below the RQ established for each of those compounds, no notification is required. Thus, for the dioxin-containing wastes listed today, a one pound RQ shall be assigned upon promulgation of this rule, since a one pound RQ has already been specified by operation of law (CERCLA Section 102) for a number of the constituents of concern.²³ Therefore, if a person were to spill one pound of any of the wastes covered by today's rule, he would need to notify the NRC of the release, unless the person determines

²³ RQs have been assigned for the following constituents of concern: chlorophenols, 2,4,5-TCP, 2,4,6-TCP, 2,3,4,6-TeCP, TCDD; 1 lb; and 2,4,5-T acid, and its salt, amine, and ester derivatives, and Silvex and its esters: 100 lbs.

²² This study assumed that all generators would need an RCRA storage permit.

that there is less than an RQ of each hazardous constituent in the waste.

The one pound RQ is currently the lowest level established for reporting releases of hazardous substances for emergency response reporting. The basis for this RQ level was established under the Clean Water Act (CWA) as the smallest quantity container generally shipped in commerce. Many substances on the CERCLA Section 101(14) hazardous substance list may be extremely toxic, or otherwise extremely hazardous, and, therefore, may need to be controlled at levels well below the RQ levels. For instance, the CDDs and CDFs deserve special note for their extreme toxicity.

The RQ triggers are intended to provide notice of releases so that an On-Scene Coordinator (OSC), pursuant to the National Contingency Plan (40 CFR 300), can assess the hazard and the actions that may be taken by the federal government. It is emphasized that the legal obligation for the responsible party to notify the NRC is independent of actions taken by an OSC. The different RQ levels do not reflect a determination that a release of a substance will be hazardous at the RQ level, or not hazardous below that level. EPA has not attempted to make such a determination because the actual hazard will vary with the unique circumstances of the release, and extensive scientific data and analysis would be necessary to estimate the precise hazard presented by each substance in a number of plausible circumstances. Instead, the RQs reflect EPA's judgment that the Federal government should be notified of releases to which a response might be necessary. The RQs, in themselves, do not represent any determination that releases of a particular size are actually harmful to public health or the environment. See 48 FR 23560, May 25, 1983.

Many other considerations besides the quantity released affect the government's decision concerning whether and how it should respond to a particular release. The location of the release, its proximity to drinking water supplies or other valuable resources, the likelihood of exposure or injury to nearby populations, and other factors must be assessed on a case-by-case basis. The reporting requirement is, however, the trigger for assessments to be made (see 48 FR 23560).

While the one pound RQ is clearly the smallest emergency response notification trigger at the present time for CERCLA and CWA releases, EPA can take response, cleanup, and other actions below RQ levels. The RQ is a level that legally requires reporting by

the responsible party. There obviously may be instances where EPA would need to know of releases well below the one pound RQ level. While EPA, in future refinements to the RQ scales, may consider lower levels, *this process is independent of today's rulemaking*. The reader is also advised that notification requirements within RCRA may require notification for releases which may be harmful, regardless of RQ determinations under CERCLA or the CWA. Specifically, the responsible party may be required to provide notice to EPA or the National Response Center under RCRA regarding spills and leaks of hazardous waste or hazardous waste constituents that may enter the environment (see 40 CFR 262.34, 263.30, 264.56, and 265.56). In addition, each person who generates, transports, treats, stores, or disposes of these wastes must notify EPA of their activities, and thus, EPA will be aware of those persons who handle these extremely hazardous wastes.

VIII. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within their States. (See 40 CFR Part 271 for the standards and requirements for authorization.) Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, and transportation of hazardous wastes and the operation of facilities that treat, store, or dispose of hazardous waste. Interim authorization is granted to States with programs that are "substantially equivalent" to the Federal program (Section 3006(c)). Final authorization is granted to States with programs that are equivalent to the Federal program, consistent with the Federal program and other State programs, and that provide for adequate enforcement (Section 3006(b)).

Under RCRA, prior to the Hazardous and Solid Waste Amendments of 1984, once EPA authorizes a State program, EPA suspends administration and enforcement within the State of those parts of the Federal program for which the State is authorized. In authorized States, EPA does retain enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility. However, under Section 3006(g) of the Hazardous and Solid Waste Amendments of 1984, any requirement pertaining to hazardous wastes promulgated pursuant to the

Amendments is effective in authorized States at the same time it is effective in other States. EPA will administer and enforce the requirements in each State until the State is authorized with respect to such requirements.

The listing and related management standards promulgated in today's rule are applicable in all States since the requirements are imposed pursuant to the Amendments. Thus EPA will implement these standards until authorized States revise their programs to adopt these rules.

B. Effect on State Authorizations

Under RCRA, authorized State programs must be revised to incorporate new requirements imposed by statute or EPA regulations. The procedures and schedule for State adoption of these requirements is described in 40 CFR 271.21. See 49 FR 21678 (May 22, 1984).

States that have final authorization must revise their programs within a year of promulgation of today's regulations if only regulatory changes are necessary. These deadlines can be extended in exceptional cases. See 40 CFR 271.21(e).

States that submit official applications for final authorization less than 12 months after promulgation of today's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include the listing and related management standards substantially equivalent or equivalent to EPA's within the time period discussed above.

Under the HSWA, states revising their programs to adopt new requirements imposed under the HSWA may do so based on state requirements that are equivalent or substantially equivalent to the HSWA requirements. See Section 3006(g)(2). Thus a state seeking authorization for today's amendments may do so based on controls that are equivalent or substantially equivalent to today's rule.

IX. Economic, Environmental, and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major", and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments, in part, replace regulations under a different statute (Section 5(d) of the Toxic Substance Control Act), and impose an additional regulatory burden on only a small number of manufacturers of chlorophenols, and their chlorophenoxy derivatives. In addition, some

manufacturers who use equipment which may be contaminated with CDDs and CDFs may also have an additional regulatory burden.

EPA has analyzed the potential economic impact of these amendments (JRB, 1984). This analysis considered various disposal scenarios; this analysis also assumed that all generators of these wastes would need a permit for their tank or container storage facility, (*i.e.*, none of these generators would qualify for the short storage provision in 40 CFR § 262.34), including the requirement for secondary containment. Based on this analysis, we estimate the cost of this regulation to be between six and eight million. In addition, we also carefully evaluated the impact of these rules on the costs, prices, and markets of these products (dePoix, 1984). Based on this analysis, EPA has determined that major increases in consumer prices are not likely, and since these products have negligible foreign competition, the implementation of these regulations will have little or no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in either domestic or export markets.

Therefore, since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of \$100 million or more, will not result in a measurable increase in costs or prices, or have an adverse impact on the ability of U.S.-based enterprises in either domestic or export markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and any EPA responses to those comments are available for public inspection in S-212 at EPA.

B. Regulatory Flexibility Act.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The hazardous waste listed in § 261.31 of this final regulation are rarely generated by small entities. The overall compliance costs associated with the rule are modest. (See report entitled, "Cost Impact Analysis for the Proposed Rule Regulating Certain Waste Containing Certain Chlorinated Dioxins, -Dibenzofurans, and Phenols" for cost estimates.) The only one of these wastes that small entities would discard are the formulating wastes, and EPA does not believe that small entities will dispose of significant quantities of the commercial chemical products. Nor did commenters present any quantified information that significant amounts of these commercial products are discarded by large or small entities. In addition, many of these formulations are already listed wastes. See, *e.g.*, Hazardous Waste No. U242. Thus, today's amendment is unlikely to have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

C. Paper Work Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050-0012.

X. References

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- Waste treatment and disposal, Water pollution control, Water supply. Confidential business information.
- 40 CFR Part 775**
- Environmental protection, Hazardous materials, Pesticides and pests, Waste treatment and disposal.
- Dated: December 20, 1984.
- Alvin L. Alm,
Acting Administrator.
- For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended to read as follows:
- PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**
1. The authority citation for Part 261 reads as follows:
- Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).
2. In § 261.5, paragraphs (e)(1) and (e)(2) are revised to read as follows:
- § 261.5 Special requirements for hazardous waste generated by small quantity generators.**
- * * * * *
- (e) * * *
- (1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).
- (2) A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).
- * * * * *
3. In § 261.7, the introductory text of paragraphs (b)(1) and (b)(3) are revised to read as follows:
- § 261.7 Residues of hazardous waste in empty containers.**
- * * * * *
- (b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) of this chapter is empty if:
- * * * * *
- (3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) is empty if:
- * * * * *
4. In § 261.30, paragraph (d) is revised to read as follows:
- XI. List of Subjects**
- 40 CFR Part 261**
- Hazardous materials, Waste treatment and disposal, Recycling.
- 40 CFR Part 264**
- Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Security bonds, Waste treatment and disposal.
- 40 CFR Part 265**
- Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Security bonds, Waste treatment and disposal, Water supply.
- 40 CFR Part 270**
- Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials,

§ 261.30 General.

(d) The following hazardous wastes listed in § 261.31 or § 261.32 are subject to the exclusion limits for acutely

hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. FO20, FO21, FO22, FO23, FO26, and FO27.

5. In § 261.31, add the following waste streams:

§ 261.31 Hazardous waste from nonspecific sources.

Industry	EPA hazardous waste No.	Hazardous waste	Hazard code
Generic	FO20	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
	FO21	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)
	FO22	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
	FO23	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
	FO26	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
	FO27	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component).	(H)
	FO28	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27.	(T)

6. § 261.33(f) is amended by revising the hazardous waste numbers for the following substances:

§ 261.33 Discarded commercial chemical product, off-specification species, container residues, and spill residues thereof.

(f)

Hazardous waste No.	Substance
See FO27	Pentachlorophenol.
See FO27	Phenol, pentachloro-.
Do	Phenol, 2,3,4,6-tetrachloro-.
Do	Phenol, 2,4,5-trichloro-.
Do	Phenol, 2,4,6-trichloro-.
See FO27	Propionic acid, 2-(2,4,5-trichlorophenoxy)-.
See FO27	Silvex.
See FO27	2,4,5-T.
See FO27	2,3,4,6-Tetrachlorophenol.
See FO27	2,4,5-Trichlorophenol.
Do	2,4,6-Trichlorophenol.
Do	2,4,5-Trichlorophenoxyacetic acid.

7. Amend Table 1 in Appendix III of Part 261, by removing the entry "chlorinated dibenzodioxins", and adding the following entries in alphabetical order:

Appendix III—Chemical Analysis Test Methods

TABLE 1.—ANALYTICAL METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW-846

Compound	First edition method(s)	Second edition method(s)
Chlorinated dibenzo-p-dioxins		8280
Chlorinated dibenzofurans		8280

8. Amend Table 3 in Appendix III of Part 261, by adding the following entry under Organic Analytical Methods—Gas Chromatographic/Mass Spectroscopy Methods (GC/MS) after the entry entitled "GC/MS Semi-Volatiles, Capillary:

TABLE 3.—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846

Title	First edition		Second edition	
	Section No.	Method No.	Section No.	Method No.
Analysis of Chlorinated Dioxins and Dibenzofurans			8.2	8280

9. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Wastes

EPA hazardous waste No.	Hazardous constituents for which listed
FO20	Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachloro-dibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
FO21	Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
FO22	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
FO23	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
FO26	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
FO27	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
FO28	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.

10. Add the following constituents in alphabetical order to Appendix VIII of Part 261:

Appendix VIII—Hazardous Constituents

- hexachlorodibenzo-p-dioxins
- hexachlorodibenzofurans
- pentachlorodibenzo-p-dioxins
- pentachlorodibenzofurans

tetrachlorodibenzo-*p*-dioxins
tetrachlorodibenzofurans

11. Appendix X is added to Part 261 to read as follows:

Appendix X—Method of Analysis for Chlorinated dibenzo-*p*-dioxins and dibenzofurans^{1, 2, 3, 4}

Method 8200

1. Scope and Application

1.1 This method measures the concentration of chlorinated dibenzo-*p*-dioxins and chlorinated dibenzofurans in chemical wastes including still bottoms, filter aids, sludges, spent carbon, and reactor residues, and in soils.

1.2 The sensitivity of this method is dependent upon the level of interferences.

1.3 This method is recommended for use only by analysts experienced with residue analysis and skilled in mass spectral analytical techniques.

1.4 Because of the extreme toxicity of these compounds, the analyst must take necessary precautions to prevent exposure to himself, or to others, of materials known or believed to contain CDDs or CDFs.

2. Summary of the Method

2.1 This method is an analytical extraction cleanup procedure, and capillary column gas chromatograph-low resolution mass spectrometry method, using capillary column GC/MS conditions and internal standard techniques, which allow for the measurement of PCDDs and PCDFs in the extract.

2.2 If interferences are encountered, the method provides selected general purpose cleanup procedures to aid the analyst in their elimination.

3. Interferences

3.1 Solvents, reagents, glassware, and other sample processing hardware may yield

discrete artifacts and/or elevated baselines causing misinterpretation of gas chromatograms. All of these materials must be demonstrated to be free from interferences under the conditions of the analysis by running method blanks. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required.

3.2 Interferences co-extracted from the samples will vary considerably from source to source, depending upon the diversity of the industry being sampled. PCDD is often associated with other interfering chlorinated compounds such as PCB's which may be at concentrations several orders of magnitude higher than that of PCDD. While general cleanup techniques are provided as part of this method, unique samples may require additional cleanup approaches to achieve the sensitivity stated in Table 1.

3.3 The other isomers of tetrachlorodibenzo-*p*-dioxin may interfere with the measurement of 2,3,7,8-TCDD. Capillary column gas chromatography is required to resolve those isomers that yield virtually identical mass fragmentation patterns.

4. Apparatus and Materials

4.1. Sampling equipment for discrete or composite sampling.

4.1.1 Grab sample bottle—amber glass, 1-liter or 1-quart volume. French or Boston Round design is recommended. The container must be washed and solvent rinsed before use to minimize interferences.

4.1.2. Bottle caps—threaded to screw on to the sample bottles. Caps must be lined with Teflon. Solvent washed foil, used with the shiny side towards the sample, may be substituted for the Teflon if sample is not corrosive.

4.1.3. Compositing equipment—automatic or manual compositing system. No tygon or rubber tubing may be used, and the system must incorporate glass sample containers for the collection of a minimum of 250 ml. Sample containers must be kept refrigerated after sampling.

4.2 Water bath—heated, with concentric ring cover, capable of temperature control ($\pm 2^\circ\text{C}$). The bath should be used in a hood.

4.3 Gas chromatograph/mass spectrometer data system.

4.3.1 Gas chromatograph: An analytical system with a temperature-programmable gas chromatograph and all required accessories including syringes, analytical columns, and gases.

4.3.2 Column: SP-2250 coated on a 30 m long \times 0.25 mm I.D. glass column (Supelco No. 2-3714 or equivalent). Glass capillary column conditions: Helium carrier gas at 30 cm/sec linear velocity run splitless. Column temperature is 210 $^\circ\text{C}$.

4.3.3 Mass spectrometer: Capable of scanning from 35 to 450 amu every 1 sec or less, utilizing 70 volts (nominal) electron energy in the electron impact ionization mode and producing a mass spectrum which meets all the criteria in Table 2 when 50 ng of decafluorotriphenyl-phosphine (DFTPP) is injected through the GC inlet. The system must also be capable of selected ion monitoring (SIM) for at least 4 ions simultaneously, with a cycle time of 1 sec or

less. Minimum integration time for SIM is 100 ms. Selected ion monitoring is verified by injecting .015 ng of TCDD Cl³⁷ to give a minimum signal to noise ratio of 5 to 1 at mass 328.

4.3.4 GC/MS interface: Any GC-to-MS interface that gives acceptable calibration points at 50 ng per injection for each compound of interest and achieves acceptable tuning performance criteria (see Sections 6.1-6.3) may be used. GC-to-MS interfaces constructed of all glass or glass-lined materials are recommended. Glass can be deactivated by silanizing with dichlorodimethylsilane. The interface must be capable of transporting at least 10 ng of the components of interest from the GC to the MS.

4.3.5 Data system: A computer system must be interfaced to the mass spectrometer. The system must allow the continuous acquisition and storage on machine-readable media of all mass spectra obtained throughout the duration of the chromatographic program. The computer must have software that can search any GC/MS data file for ions of a specific mass and that can plot such ion abundances versus time or scan number. This type of plot is defined as an Extracted Ion Current Profile (EICP). Software must also be able to integrate the abundance, in any EICP, between specified time or scan number limits.

4.4 Pipettes-Disposable, Pasteur, 150 mm long \times 5 mm ID (Fisher Scientific Co., No. 13-678-6A or equivalent).

4.5 Flint glass bottle (Teflon-lined screw cap).

4.6 Reacti-vial (silanized) (Pierce Chemical Co.).

5. Reagents

5.1 Potassium hydroxide-(ACS), 2% in distilled water.

5.2 Sulfuric acid-(ACS), concentrated.

5.3 Methylene chloride, hexane, benzene, petroleum ether, methanol, tetradecane-pesticide quality or equivalent.

5.4 Prepare stock standard solutions of TCDD and ³⁷Cl-TCDD (molecular weight 328) in a glove box. The stock solutions are stored in a glovebox, and checked frequently for signs of degradation or evaporation, especially just prior to the preparation of working standards.

5.5 Alumina-basic, Woelm; 80/200 mesh. Before use activate overnight at 600 $^\circ\text{C}$, cool to room temperature in a dessicator.

5.6 Purified nitrogen gas

6.0 Calibration

6.1 Before using any cleanup procedure, the analyst must process a series of calibration standards through the procedure to validate elution patterns and the absence of interferences from reagents.

6.2 Prepare GC/MS calibration standards for the internal standard technique that will allow for measurement of relative response factors of at least three CDD/³⁷CDD ratios. Thus, for TCDDs, at least three TCDD/³⁷Cl-TCDD and TCDF/³⁷Cl-TCDF must be determined.⁵ The ³⁷Cl-TCDD/F concentration

⁵ ³⁷Cl-labeled 2,3,7,8-TCDD and 2,3,7,8-TCDF are available from K.O.R. Isotopes, and Cambridge

Continued

¹ This method is appropriate for the analysis of tetra-, penta-, and hexachlorinated dibenzo-*p*-dioxins and -dibenzofurans.

² Analytical protocol for determination of TCDDs in phenolic chemical wastes and soil samples obtained from the proximity of chemical dumps. T.O. Tiernan and M. Taylor, Brehm Laboratory, Wright State University, Dayton, OH 45435.

³ Analytical protocol for determination of chlorinated dibenzo-*p*-dioxins and chlorinated dibenzofurans in river water. T.O. Tiernan and M. Taylor, Brehm Laboratory, Wright State University, Dayton, OH 45435.

⁴ In general, the techniques that should be used to handle these materials are those which are followed for radioactive or infectious laboratory materials. Assistance in evaluating laboratory practices may be obtained from industrial hygienists and persons specializing in safe laboratory practices. Typical infectious waste incinerators are probably not satisfactory devices for disposal of materials highly contaminated with CDDs or CDFs. Safety instructions are outlined in EPA Test Method 613/4.0

See also: 1) "Program for monitoring potential contamination in the laboratory following the handling and analyses of chlorinated dibenzo-*p*-dioxins and dibenzofurans" by F. D. Hileman et al., In: Human and Environmental Risks of Chlorinated Dioxins and Related Compounds, R.E. Tucker, et al. eds., Plenum Publishing Corp., 1983. 2) Safety procedures outlined in EPA Method 613, Federal Register volume 44, No. 233, December 3, 1979.

in the standard should be fixed and selected to yield a reproducible response at the most sensitive setting of the mass spectrometer. Response factors for PCDD and HxCDD may be determined by measuring the response of the tetrachloro-labelled compounds relative to that of the unlabelled 1,2,3,4- or 2,3,7,8-TCDD, 1,2,3,4,7-PCDD or 1,2,3,4,7,8-HxCDD, which are commercially available.⁹

6.3 Assemble the necessary GC/MS apparatus and establish operating parameters equivalent to those indicated in Section 11.1 of this method. Calibrate the GC/MS system according to Eichelberger, et al. (1975) by the use of decafluorotriphenyl phosphine (DFTPP). By injecting calibration standards, establish the response factors for CDDs vs. ³⁵Cl-TCDD, and for CDFs vs. ³⁵Cl-TCDF. The detection limit provided in Table 1 should be verified by injecting .015 ng of ³⁵Cl-TCDD which should give a minimum signal to noise ratio of 5 to 1 at mass 328.

7. Quality Control

7.1 Before processing any samples, the analyst should demonstrate through the analysis of a distilled water method blank, that all glassware and reagents are interference-free. Each time a set of samples is extracted, or there is a change in reagents, a method blank should be processed as a safeguard against laboratory contamination.

7.2 Standard quality assurance practices must be used with this method. Field replicates must be collected to measure the precision of the sampling technique. Laboratory replicates must be analyzed to establish the precision of the analysis. Fortified samples must be analyzed to establish the accuracy of the analysis.

8. Sample Collection, Preservation, and Handling

8.1 Grab and composite samples must be collected in glass containers. Conventional sampling practices should be followed, except that the bottle must not be prewashed with sample before collection. Composite samples should be collected in glass containers in accordance with the requirements of the RCRA program. Sampling equipment must be free of tygon and other potential sources of contamination.

8.2 The samples must be iced or refrigerated from the time of collection until extraction. Chemical preservatives should not be used in the field unless more than 24 hours will elapse before delivery to the laboratory. If an aqueous sample is taken and the sample will not be extracted within 48 hours of collection, the sample should be adjusted to a pH range of 6.0-8.0 with sodium hydroxide or sulfuric acid.

Isotopes, Inc., Cambridge, MA. Proper standardization requires the use of a specific labelled isomer for each congener to be determined. However, the only labelled isomers readily available are ³⁵Cl-2,3,7,8-TCDD and ³⁵Cl-2,3,7,8-TCDF. This method therefore uses these isomers as surrogates for the CDDs and CDFs. When other labelled CDDs and CDFs are available, their use will be required.

⁹ This procedure is adopted because standards are not available for most of the CDDs and CDFs, and assumes that all the congeners will show the same response as the unlabelled congener used as a standard. Although this assumption may not be true in all cases, the error will be small.

6.3 All samples must be extracted within 7 days and completely analyzed within 30 days of collection.

9. Extraction and Cleanup Procedures

9.1 Use an aliquot of 1-10 g sample of the chemical waste or soil to be analyzed. Soils should be dried using a stream of prepurified nitrogen and pulverized in a ball-mill or similar device. Perform this operation in a clear area with proper hood space. Transfer the sample to a tared 125 ml flint glass bottle (Teflon-lined screw cap) and determine the weight of the sample. Add an appropriate quantity of ³⁵Cl-labelled 2,3,7,8-TCDD (adjust the quantity according to the required minimum detectable concentration), which is employed as an internal standard.

9.2 Extraction

9.2.1 Extract chemical waste samples by adding 10 ml methanol, 40 ml petroleum ether, 50 ml doubly distilled water, and then shaking the mixture for 2 minutes. Tars should be completely dissolved in any of the recommended neat solvents. Activated carbon samples must be extracted with benzene using method 3540 in SW-846 (Test Methods for Evaluating Solid Waste—Physical/Chemical Methods, available from G.P.O. Stock #055-022-81001-2). Quantitatively transfer the organic extract or dissolved sample to a clean 250 ml flint glass bottle (Teflon lined screw cap), add 50 ml doubly distilled water and shake for 2 minutes. Discard the aqueous layer and proceed with Step 9.3.

9.2.2 Extract soil samples by adding 40 ml of petroleum ether to the sample, and then shaking for 20 minutes. Quantitatively transfer the organic extract to a clean 250 ml flint glass bottle (Teflon-lined screw cap), add 50 ml doubly distilled water and shake for 2 minutes. Discard the aqueous layer and proceed with Step 9.3.

9.3 Wash the organic layer with 50 ml of 20% aqueous potassium hydroxide by shaking for 10 minutes and then remove and discard the aqueous layer.

9.4 Wash the organic layer with 50 ml of doubly distilled water by shaking for 2 minutes, and discard the aqueous layer.

9.5 Cautiously add 50 ml concentrated sulfuric acid and shake for 10 minutes. Allow the mixture to stand until layers separate (approximately 10 minutes), and remove and discard the acid layer. Repeat acid washing until no color is visible in the acid layer.

9.6 Add 50 ml of doubly distilled water to the organic extract and shake for 2 minutes. Remove and discard the aqueous layer and dry the organic layer by adding 10g of anhydrous sodium sulfate.

9.7 Concentrate the extract to incipient dryness by heating in a 55° C water bath and simultaneously flowing a stream of prepurified nitrogen over the extract. Quantitatively transfer the residue to an alumina microcolumn fabricated as follows:

9.7.1 Cut off the top section of a 10 ml disposable Pyrex pipette at the 4.0 ml mark and insert a plug of silanized glass wool into the tip of the lower portion of the pipette.

9.7.2 Add 2.8g of Woelm basic alumina (previously activated at 600° C overnight and then cooled to room temperature in a desiccator just prior to use).

9.7.3 Transfer sample extract with a small volume of methylene chloride.

9.8 Elute the microcolumn with 10 ml of 3% methylene chloride-in-hexane followed by 15 ml of 20% methylene chloride-in-hexane and discard these effluents. Elute the column with 15 ml of 50% methylene chloride-in-hexane and concentrate this effluent (55° C water bath, stream of prepurified nitrogen) to about 0.3-0.5 ml.

9.9 Quantitatively transfer the residue (using methylene chloride to rinse the container) to a silanized Reacti-Vial (Pierce Chemical Co.). Evaporate, using a stream of prepurified nitrogen, almost to dryness, rinse the walls of the vessel with approximately 0.5 ml methylene chloride, evaporate just to dryness, and tightly cap the vial. Store the vial at 5° C until analysis, at which time the sample is reconstituted by the addition of tridecane.

9.10 Approximately 1 hour before GC-MS (HRGC-LRMS) analysis, dilute the residue in the micro-reaction vessel with an appropriate quantity of tridecane. Gently swirl the tridecane on the lower portion of the vessel to ensure dissolution of the CDDs and CDFs. Analyze a sample by GC/EC to provide insight into the complexity of the problem, and to determine the manner in which the mass spectrometer should be used. Inject an appropriate aliquot of the sample into the GC-MS instrument, using a syringe.

9.11 If, upon preliminary GC-MS analysis, the sample appears to contain interfering substances which obscure the analyses for CDDs and CDFs, high performance liquid chromatographic (HPLC) cleanup of the extract is accomplished, prior to further GC-MS analysis.

10. HPLC Cleanup Procedure⁹

10.1 Place approximately 2 ml of hexane in a 50 ml flint glass sample bottle fitted with a Teflon-lined cap.

10.2 At the appropriate retention time, position sample bottle to collect the required fraction.

10.3 Add 2 ml of 5% (w/v) sodium carbonate to the sample fraction collected and shake for one minute.

10.4 Quantitatively remove the hexane layer (top layer) and transfer to a micro-reaction vessel.

10.5 Concentrate the fraction to dryness and retain for further analysis.

11. GC/MS Analysis

11.1 The following column conditions are recommended: Glass capillary column conditions: SP-2250 coated on a 30 m long x 0.25 mm I.D. glass column (Supelco No. 2-3714, or equivalent) with helium carrier gas at 30 cm/sec linear velocity, run splitless. Column temperature is 210° C. Under these conditions the retention time for TCDDs is about 9.5 minutes. Calibrate the system daily with, a minimum, three injections of standard mixtures.

11.2 Calculate response factors for standards relative to ³⁵Cl-TCDD/F (see Section 12).

11.3 Analyze samples with selected ion monitoring of at least two ions from Table 3.

⁹ For cleanup see also method #8320 or #8330, SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (1982).

Proof of the presence of CDD or CDF exists if the following conditions are met:

11.3.1 The retention time of the peak in the sample must match that in the standard, within the performance specifications of the analytical system.

11.3.2 The ratio of ions must agree within 10% with that of the standard.

11.3.3 The retention time of the peak maximum for the ions of interest must exactly match that of the peak.

11.4 Quantitate the CDD and CDF peaks from the response relative to the ^{37}Cl -TCDD/F internal standards. Recovery of the internal standard should be greater than 50 percent.

11.5 If a response is obtained for the appropriate set of ions, but is outside the expected ratio, a co-eluting impurity may be suspected. In this case, another set of ions characteristic of the CDD/CDF molecules should be analyzed. For TCDD a good choice of ions is m/e 257 and m/e 259. For TCDF a good choice of ions is m/e 241 and 243. These ions are useful in characterizing the molecular structure to TCDD or TCDF. For analysis of TCDD good analytical technique would require using all four ions, m/e 257, 320, 322, and 328, to verify detection and signal to noise ratio of 5 to 1. Suspected impurities such as DDE, DDD, or PCB residues can be confirmed by checking for their major fragments. These materials can be removed by the cleanup columns. Failure to meet criteria should be explained in the report, or the sample reanalyzed.

11.6 If broad background interference restricts the sensitivity of the GC/MS analysis, the analyst should employ cleanup procedures and reanalyze by GC/MS. See section 10.0.

11.7 In those circumstances where these procedures do not yield a definitive conclusion, the use of high resolution mass spectrometry is suggested.

12. Calculations

12.1 Determine the concentration of individual compounds according to the formula:

$$\text{Concentration, } \mu\text{g/gm} = \frac{A \times A_s}{G \times A_u \times R_f}$$

where:

A = μg of internal standard added to the sample *

G = gm of sample extracted

A_s = area of characteristic ion of the compound being quantified.

A_u = area of characteristic ion of the internal standard

R_f = response factor *

* The proper amount of standard to be used is determined from the calibration curve (See Section 6.0).

* If standards for PCDDs/Fs and HxCDDs/Fs are not available, response factors for ions derived from these congeners are calculated relative to ^{37}Cl -TCDD/F. The analyst may use response factors for 1,2,3,4- or 2,3,7,8-TCDD, 1,2,3,4,7-PeCDD, or 1,2,3,4,7,8-HxCDD for quantitation of TCDDs/Fs, PeCDDs/Fs and HxCDDs/Fs, respectively. Implicit in this requirement is the assumption that the same response is obtained from PCDDs/Fs containing the same numbers of chlorine atoms.

Response factors are calculated using data obtained from the analysis of standards according to the formula:

$$R_f = \frac{A_s \times C_{is}}{A_u \times C_s}$$

where:

C_{is} = concentration of the internal standard

C_s = concentration of the standard compound

12.2 Report results in micrograms per gram without correction for recovery data.

When duplicate and spiked samples are analyzed, all data obtained should be reported.

12.3 Accuracy and Precision. No data are available at this time.

TABLE 1.—GAS CHROMATOGRAPHY OF TCDD

Column	Retention time (min.)	Detection limit ($\mu\text{g}/\text{kg}$) ¹
Glass capillary.....	9.5	0.003

TABLE 3.—LIST OF ACCURATE MASSES MONITORED USING GC SELECTED-ION MONITORING, LOW RESOLUTION, MASS SPECTROMETRY FOR SIMULTANEOUS DETERMINATION OF TETRA-, PENTA-, AND HEXACHLORINATED DIBENZO-*p*-DIOXINS AND DIBENZOFURANS

Class of chlorinated dibenzodioxin or dibenzofuran	Number of chlorine substituents (x)	Monitored m/z for dibenzodioxins $\text{C}_{12}\text{H}_8-x\text{O}_2$	Monitored m/z for dibenzofurans $\text{C}_{12}\text{H}_6-x\text{OCl}_x$	Approximate theoretical ratio expected on basis of isotopic abundance
Tetra.....	4	¹ 319.807	¹ 303.902	0.74
		321.894	305.903	1.00
		² 327.885	² 311.894	
		³ 256.903		0.21
Penta.....	5	² 258.900		0.20
		¹ 353.858	¹ 337.863	0.57
		355.855	339.860	1.00
Hexa.....	6	369.816	373.821	1.00
		391.813	375.818	0.87

¹ Molecular ion peak.

² ^{37}Cl -labelled standard peaks.

³ Ions which can be monitored in TCDD analyses for confirmation purposes.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

13. In Subpart I of Part 264, the introductory text in paragraph (c) is revised and a new paragraph (d) is added to § 264.175:

§ 264.175 Containment.

(c) Storage areas that store containers holding only wastes that do not contain

¹ Detection limit for liquid samples is 0.003 $\mu\text{g}/\text{l}$. This is calculated from the minimum detectable GC response being equal to five times the GC background noise assuming a 1 ml effective final volume of the 1 liter sample extract, and a GC injection of 5 microliters. Detection levels apply to both electron capture and GC/MS detection. For further details see 44 FR 69526 (December 3, 1979).

TABLE 2.—DFTPP KEY IONS AND ION ABUNDANCE CRITERIA¹

Mass	Ion abundance criteria
51	30-60% of mass 198.
66	Less than 2% of mass 69.
70	Less than 2% of mass 69.
127	40-60% of mass 198.
197	Less than 1% of mass 198.
198	Base peak, 100% relative abundance.
199	5-6% of mass 198.
275	10-30% of mass 106.
365	Greater than 1% of mass 198.
441	Present but less than mass 443.
442	Greater than 40% of mass 198.
443	17-23% of mass 442.

¹ J. W. Eichelberger, L.E. Harns, and W.L. Budde, 1975. Reference compound to calibrate ion abundance measurement in gas chromatography-mass spectrometry. Analytical Chemistry 47:995.

free liquids need not have a containment system defined by paragraph (b) of this section, except as provided by paragraph (d) of this section or provided that:

(d) Storage areas that store containers holding the wastes listed below that do not contain free liquids must have a containment system defined by paragraph (b) of this section:

(1) FO20, FO21, FO22, FO23, FO26, and FO27.

(2) [Reserved]

14. In Subpart J of Part 264, amend § 264.194 by redesignating paragraph (c) as paragraph (c)(1), and adding a new paragraph (c)(2):

§ 264.194 Inspections.

(c)(1) * * *

(2) For EPA Hazardous Wastes Nos. FO20, FO21, FO22, FO23, FO26, and FO27, the contingency plan must also include the procedures for responding to a spill or leak of these wastes from tanks into the containment system. These procedures shall include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.

15. In Subpart J of Part 264, add the following § 264.200:

§ 264.200 Special requirements for hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27.

(a) In addition to the other requirements of Subpart J, the following requirements apply to tanks storing or treating hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27.

(1) Tanks must have systems designed and operated to detect and adequately contain spills or leaks. The design and operation of any containment system must reflect consideration of all relevant factors, including:

- (i) Capacity of the tank;
- (ii) Volumes and characteristics of wastes stored or treated in the tank;
- (iii) Method of collection of spills or leaks;
- (iv) The design and construction materials of the tank and containment system; and
- (v) The need to prevent precipitation and run-on from entering into the system.

(2) As part of the contingency plan required by Subpart D of Part 264, the owner or operator must specify such procedures for responding to a spill or leak from the tank into the containment system as may be necessary to protect human health and the environment. These procedures shall include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.

16. In Subpart K of Part 264, add the following section § 264.231:

§ 264.231 Special requirements for hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27.

(a) Hazardous Wastes FO20, FO21, FO22, FO23, FO26, and FO27 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

17. In Subpart L of Part 264, add the following section § 264.259:

§ 264.259 Special requirements for hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27.

(a) Hazardous Wastes FO20, FO21, FO22, FO23, FO26, and FO27 must not be placed in waste piles that are not enclosed (as defined in § 264.250(c)) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

18. In Subpart M of Part 264, add the following section § 264.283:

§ 264.283 Special requirements for hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27.

(a) Hazardous Wastes FO20, FO21, FO22, FO23, FO26 and FO27 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

19. In Subpart N of Part 264, add the following section § 264.317:

§ 264.317 Special requirements for hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27.

(a) Hazardous Wastes FO20, FO21, FO22, FO23, FO26, and FO27 must not be placed in a landfills unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Regional Administrator pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Part. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The Regional Administrator may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes FO20, FO21, FO22, FO23, FO26, and FO27 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

20. In Subpart O of Part 264, amend § 264.343 by revising paragraph (a) and redesignating paragraph (a) as paragraph (a)(1), and adding a new paragraph (a)(2) to read as follows:

§ 264.343 Performance standards.

(a)(1) Except as provided in paragraph (a)(2), an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(W_{in} - W_{out})}{W_{in}} \times 100\%$$

where:

W_{in} = mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator

and
 W_{out} = mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous wastes FO20, FO21, FO22, FO23, FO26, or FO27 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in § 264.343(a)(1). In addition, the owner or operator of the incinerator must notify the Regional Administrator of his intent to incinerate hazardous wastes FO20, FO21, FO22, FO23, FO26, or FO27.

PART 265—INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

21. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

22. § 265.1 is amended by adding paragraph (d)

§ 265.1 Purpose, scope, and applicability.

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this Part.

(1) EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, or FO27 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of § 264.250(c) as well as all other applicable requirements of Subpart L of this Part;

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in § 265.352; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in § 265.383.

23. In Subpart O of Part 265, add the following § 265.352:

§ 265.352 Interim Status Incinerators Burning Particular Hazardous Wastes.

(a) Owners or operators of incinerators subject to this Subpart may burn EPA Hazardous Wastes FO20, FO21, FO22, FO23, FO26, or FO27 if they receive a certification from the Assistant Administrator for Solid Waste and Emergency Response that they can meet the performance standards of Subpart O of Part 264 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner or operator will submit an application to the Assistant Administrator for Solid Waste and Emergency Response containing applicable information in §§ 270.19 and 270.62 demonstrating that the incinerator can meet the performance

standards in Subpart O of Part 264 when they burn these wastes.

(2) The Assistant Administrator for Solid Waste and Emergency Response will issue a tentative decision as to whether the incinerator can meet the performance standards in Subpart O of Part 264. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Assistant Administrator for Solid Waste and Emergency Response will accept comment on the tentative decision for 60 days. The Assistant Administrator for Solid Waste and Emergency Response also may hold a public hearing upon request or at his discretion.

(3) After the close of the public comment period, the Assistant Administrator for Solid Waste and Emergency Response will issue a decision whether or not to certify the incinerator.

24. In Subpart P of Part 265, add the following § 265.383:

§ 265.383 Interim Status Thermal Treatment Devices Burning Particular Hazardous Waste.

(a) Owners or operators of thermal treatment devices subject to this Subpart may burn EPA Hazardous Wastes FO20, FO21, FO22, FO23, FO26, or FO27 if they receive a certification from the Assistant Administrator for Solid Waste and Emergency Response that they can meet the performance standards of Subpart O of Part 264 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

(1) The owner or operator will submit an application to the Assistant Administrator for Solid Waste and Emergency Response containing the applicable information in §§ 270.19 and 270.62 demonstrating that the thermal treatment unit can meet the performance standard in Subpart O of Part 264 when they burn these wastes.

(2) The Assistant Administrator for Solid Waste and Emergency Response will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in Subpart O of Part 264. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The Assistant Administrator for Solid Waste and Emergency Response will accept comment on the tentative decision for 60 days. The Assistant Administrator for

Solid Waste and Emergency Response also may hold a public hearing upon request or at his discretion.

(3) After the close of the public comment period, the Assistant Administrator for Solid Waste and Emergency Response will issue a decision whether or not to certify the thermal treatment unit.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

25. The authority citation for Part 270 reads as follows:

Authority: Secs. 1008, 2002(a), 3005, 3007, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6925, 6927, and 6974).

26. In Subpart B of Part 270, paragraph (b)(7) of § 270.14 is revised to read as follows:

§ 270.14 Contents of Part B: General requirements.

(b) *

(7) A copy of the contingency plan required by Part 264, Subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§ 264.227, 264.255, and 264.200.

27. In Subpart B of Part 270, § 270.16 is amended by adding paragraph (g):

§ 270.16 Specific Part B information requirements for tanks.

(g) Where applicable, a description of the containment and detection systems to demonstrate compliance with § 264.200(a) must include at least the following:

(1) Drawings and a description of the basic design parameters, dimensions, and materials of construction of the containment system.

(2) Capacity of the containment system relative to the design capacity of the tank(s) within the system.

(3) Description of the system to detect leaks and spills, and how precipitation and run-on will be prevented from entering into the detection system.

28. In Subpart B of Part 270, § 270.17 is amended by adding paragraph (j):

§ 270.17 Specific Part B information requirements for surface impoundments.

(j) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.231. This submission must address the following items as specified in § 264.231:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

29. In Subpart B of Part 270, § 270.18 is amended by adding paragraph (j):

§ 270.18 Specific Part B information requirements for waste piles.

(j) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a waste pile that is not enclosed (as defined in § 264.250(c)) is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.259. This submission must address the following items as specified in § 264.259:

(1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

30. In Subpart B of Part 270, § 270.20 is amended by adding paragraph (i):

§ 270.20 Specific Part B information requirements for land treatment facilities.

(i) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing

how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.283. This submission must address the following items as specified in § 264.283:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

31. In Subpart B of Part 270, § 270.21 is amended by adding paragraph (j):

§ 270.21 Specific Part B information requirements for landfills.

(j) A waste management plan for EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, and FO27 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.317. This submission must address the following items as specified in § 264.317:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

PART 775—STORAGE AND DISPOSAL OF WASTE MATERIAL [REMOVED]

32. The authority citation for Part 775 reads as follows:

Authority: Sec. 6 of the Toxic Substances Control Act (TSCA) Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605).

33. Part 775 is removed.

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Part III

Department of Health and Human Services

Public Health Service

**42 CFR Parts 122 and 123
Health Systems Agency and State Health
Planning and Development Agency
Reviews; Certificate of Need Programs;
Final Regulations**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 122 and 123

Health Systems Agency and State Health Planning and Development Agency Reviews; Certificate of Need Programs

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, amends the regulations governing certificate of need reviews by State health planning and development agencies (State Agencies) and health systems agencies (HSAs). The amendments accomplish two tasks: (1) To implement amendments to the Public Health Service Act made by the Health Programs Extension Act of 1980 (Pub. L. 96-538) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and (2) to reduce Federal regulatory burdens. Under the provisions of Title XV of the Public Health Service Act, the planning agencies are required to administer certificate of need programs consistent with the Department's regulations, under which they review and determine the need for proposed capital expenditures, institutional health services and major medical equipment. These regulations change the requirements for satisfactory certificate of need programs.

EFFECTIVE DATE: These regulations are effective on February 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John Belin, Director, Division of Agency Operations and Management, Office of Health Planning, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 9A-19, Rockville, Maryland 20857, (301) 443-6680.

SUPPLEMENTARY INFORMATION: On August 10, 1983, the Department published in the *Federal Register* (48 FR 36402) a Notice of Proposed Rulemaking (NPRM) to amend the regulations governing certificate of need programs (42 CFR 122.301 *et seq.* and 123.401 *et seq.*) in order to implement changes to Title XV of the Public Health Service Act ("the Act") that affect the requirements for those programs and to reduce Federal regulatory burdens.

The statutory changes were enacted by the Health Programs Extensions Act of 1980 (Pub. L. 96-538) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). These statutory changes are

primarily technical in nature. The 1980 and 1981 statutory amendments (1) raised the minimum thresholds for proposed projects which are required to be subject to review, (2) permitted States to exempt from review certain projects which are solely for research purposes, (3) modified the requirements for a health maintenance organization (HMO), or combination of such organizations, to qualify for an exemption for certain projects from the certificate of need program, and (4) made other minor changes.

In addition, for the purpose of reducing unnecessary Federal regulatory requirements, we proposed to amend the regulations to give State Agencies greater discretion to determine: (1) The types of projects which would be covered, (2) the procedures which must be followed, and (3) the criteria these agencies would consider in their review of applications. To accomplish this objective, we proposed to eliminate most of the provisions in the existing regulations which are not required by the statute.

Thirty comments were received in response to the NPRM. After careful consideration of these comments, the Secretary has made two changes to the proposed amendments. These changes, which are discussed more fully below, are—(1) a revision of the criterion related to access to health care (§ 123.412(a)(6)) to include a reference to nondiscrimination on the basis of age, and (2) the deletion of language pertaining to the addition of new services (§ 123.404), language which the Preamble to the NPRM noted was proposed for deletion but which was inadvertently retained in the proposed rule.

In discussing the comments, we will first respond to those of a general nature.

One commenter questioned whether the regulations were necessary in view of section 101(c) of Pub. L. 98-151, by which the Secretary is prevented by Congress from imposing any penalties on States that do not meet the requirements of the Act. Several other commenters questioned whether the regulations should be changed at a time when Congress is considering making changes to the health planning law. The fact that the Secretary may not, under current law, terminate a designation agreement or otherwise penalize a State for failure to meet the requirements of the Act and that Congress is considering amending the Act does not relieve the Department of its obligation to carry out its general responsibility of administering the Act; as long as the statute provides that States are required

to administer satisfactory certificate of need programs, the Department should take whatever actions are necessary to relieve States of unnecessary burdens.

One commenter questioned the authority of the Secretary to permit States to impose requirements more restrictive than those provided in these regulations. In fact, in only two instances does the Act prevent States from imposing such requirements. These relate to review of non-institutional HMO projects (section 1527(b)(4) and review of the acquisition of major medical equipment under State laws enacted after September 30, 1982 (section 1527(e)(1)(B)). Otherwise, the Act does not preclude a State from adopting a more comprehensive review program.

Most of the commenters requested changes that would impose additional requirements on State certificate of need programs beyond those required by the Act. As noted above, a primary purpose of these amendments is to reduce regulatory burdens and to give States maximum flexibility in operating their certificate of need programs. Because these suggestions are inconsistent with this purpose, we have decided not to revise the final rule, except the recommendation to add language concerning access of the elderly and children, mentioned above. In recommending retention of many of the provisions that were proposed for deletion, some commenters argued that these provisions provide needed detail for State certificate of need programs. The decision to delete most regulatory provisions not required by statute should not be construed as an indication that State programs should operate without necessary rules and procedures. Rather, we believe that each State is the best judge of the needs and goals of its program and, therefore, should decide, to the maximum extent possible, how its certificate of need program should be administered. Provisions of the regulations that commenters requested be retained, but which we, upon consideration, have decided to delete are: the specific public notice requirements with respect to adoption and revision of review procedures and criteria (§§ 122.307(b) (1), (2) and (3) and § 123.409(c) (1), (2) and (3)); certain specific requirements for HSA review procedures (§§ 122.308(a) (2), (6), (8) and (9)); the definition of "affected persons" (§ 123.401); nonstatutory provisions within the definition of "major medical equipment" (§ 123.401); the definitions of "substantial changes" in bed capacity and health services (§§ 123.404(a) (2) and (3)); the definition of "incurring an

obligation" (§ 123.404(c)); the requirement for dissemination of scope of coverage (§ 123.404(e)); the notification requirements for batching of applications (§ 123.410(a)(1)); the requirement for notification for beginning of review (§ 123.416(a)(2)); Secretarial approval for review periods greater than 90 days (§ 123.410(a)(3)); the requirement that the official transcript of a hearing held during the course of review be verbatim; the prohibition against imposition of hearing fees (§ 123.410(a)(8)); the definition of "person adversely affected" (§ 123.410(a)(14)); and the review consideration concerning ancillary services (§ 123.412(a)(9)).

Other commenters requested that the Secretary impose new requirements on State certificate of need programs. These suggestions have not been accepted because they would unduly limit States' flexibility in administering their certificate of need programs. Those suggestions, which we have not accepted, are as follows: expanding the definition of "health care facility" (§ 123.401) to include hospices, providers of home health services, and homes for the mentally ill; revising the definition of "ambulatory surgical services" (§ 123.401) to include "physician offices performing surgical treatments for patients;" requiring that the State health plan (§ 123.401(d)) be adopted in accordance with the State's administrative procedures act; and adding a requirement to § 123.410 that State Agencies may take no longer than 45 days to declare an application complete for purposes of beginning reviews.

Some of the suggestions regarding the proposed rules could not be accepted because they would contradict specific provisions in the Act. For example, a commenter suggested that the Secretary retain the former, lower review thresholds. With enactment of Pub. L. 97-35, Congress required that the minimum Federal thresholds be raised to \$600,000 (capital expenditure), \$250,000 (health services) and \$400,000 (major medical equipment) (the first two of these thresholds are subject to adjustment for a specified inflation factor). Although a State may retain its earlier thresholds, the statute precludes the Secretary from requiring the lower amounts. A commenter suggested revising the definition of "rehabilitation facility." The definition of rehabilitation facility in these regulations merely repeats the definition in section 1531(9) of the Act, and the Secretary may not use a different definition. Another commenter requested that States be free

to define "health maintenance organizations." Since this term is defined by section 1531(8), the Secretary may not permit a State to adopt a different definition. A commenter requested that the Department delete the requirement that facilities notify the State Agency of their intent to make research-related capital expenditures. Because a facility is required by section 1527(h) to give such a notice of intent in order for its research-related expenditures to be exempt from review, the Secretary is not authorized to delete this requirement. For the same reason, the Secretary cannot accept a commenter's suggestion to eliminate certain of the procedural requirements in § 123.410(a)(10), required by sections 1532(b)(12) and (13) of the Act, that apply to a public hearing during the course of review. In addition, the Secretary cannot revise the point in the review process at which the prohibition against ex parte contact begins, because that is established in section 1532(b)(12)(F). One commenter suggested deletion of the provision that the failure of the State Agency to act within the specified period may not result in an issuance of a certificate of need. Since section 1527(a) of the Act requires that a certificate of need may only be issued when the State has made a finding of need, the Secretary is not authorized to permit issuance of a certificate of need before the State Agency has completed action on an application.

The remaining comments and our responses will be discussed section by section.

Section 123.403 General.

Section 123.403(d) requires that each decision of the State Agency, with certain exceptions, be consistent with the State health plan. One commenter asked that the "State health plan" be defined to mean the plan adopted pursuant to section 1524(c)(2) of the Act, because some States have "non-complying" plans. We agree that the plan referred to in § 123.403(d) is the State health plan required by section 1524(c) of the Act but believes that it is unnecessary to add this language.

Section 123.404 Scope of certificate of need review programs.

Section 123.404(d) provides that States need not review certain activities related to research. A commenter asked that the language in the regulations be revised to apply to patient care research as well as biomedical research. It is unnecessary to add this provision to the regulations, since the existing regulatory language only uses the term "research."

States are therefore free to include patient care research within this exemption.

Section 123.404(a)(3)(ii) provides that the addition of a health service which entails annual operating costs of at least the expenditure minimum is subject to review. In the Preamble to the NPRM (48 FR 36404), we had proposed to revise the requirement in this paragraph that the service be considered "new" if it was not offered by or on behalf of the health care facility within the "12-month period" before the month in which the service would be offered. It was intended that States would determine this period themselves. However, the existing language of the paragraph was inadvertently retained in the text of the proposed rule. To correct this error, we have revised the language in the final rule.

Section 123.408 Enforcement.

One commenter suggested that the list of sanctions contained in § 123.408(b) be deleted and let each State decide which sanctions it will use to ensure compliance with its certificate of need law. The sanctions listed in this paragraph are only examples of sanctions that would meet the statutory requirements, and do not restrict a State's ability to select its own sanctions. Because we believe this list will be helpful to States in identifying possible sanctions the State may use, the Department has decided to retain it.

Section 123.410 Procedures for State Agency review.

Section 123.410(a)(2) requires that a State Agency notify affected persons of the beginning of the review period. One commenter asked for Federal monitoring of the State's implementation of the notification requirements. The Department does monitor overall State compliance with the Federal certificate of need requirements, but cannot review the compliance of States with each separate requirement in each individual case. Persons may avail themselves of the remedies provided under State law to assure compliance with the procedures.

Section 123.410(a)(3) is being amended to delete the minimum 60-day period an HSA is given to review applications. This requirement was deleted to give States increased flexibility in the operation of their certificate of need programs. Although this requirement is being removed, a State Agency is still required by the Act to give the appropriate HSA an opportunity to comment on an application. To accomplish this, a State Agency will

need to give the HSA sufficient time to permit an adequate review of the project. Another commenter suggested that the regulations give HSAs 90 days to review applications. This proposal cannot be accepted. State Agencies normally must make their decisions within 90 days; to allow HSAs the same period to submit recommendations could leave the State Agencies inadequate time to make their decisions after receiving the HSA recommendations.

Section 123.410(a)(5) requires that a State Agency provide for submission of periodic reports by providers of health services. A commenter asked that the Secretary clarify the kinds of reports required under this paragraph. We have not accepted this suggestion, believing it is more appropriate for the State Agency to identify the reports that it will require, based on the needs of its State program.

Section 123.410(a)(6) provides that a State Agency may impose conditions on an approval only if they relate to the criteria established by § 123.412 or to criteria prescribed by regulations of the State Agency in accordance with an authorization under State law. One commenter suggested that this limitation be eliminated. This is not possible because section 1527(a) of the Act specifies that a conditional approval may be granted only in these circumstances.

Another commenter asked that the Secretary delete the requirement under § 123.410(a)(6) that the State Agency make written findings regarding HMO approvals under § 123.405(d) and findings as to access under § 123.413(a). We believe these findings are important to accomplish the purposes of the Act, therefore the suggestion has not been adopted.

Section 123.410(a)(11) gives persons an opportunity to request the State to reconsider its certificate of need decisions. One commenter asked that the regulations specify that reconsideration hearings be held "under State regulation." Because the entire certificate of need process is carried out under the States' statutes and regulations, we have not adopted the suggestion.

Section 123.410(a)(13) establishes the procedures for review of State Agency decisions. Some commenters asked that the authority of the State's hearing officer under this paragraph be limited in the same manner as provided under the section 1122 regulations, § 125.108. In the section 1122 program, the hearing officer's responsibility is limited to consideration of whether a proposal is consistent with the State's plans, criteria

and standards. A hearing officer under a State's certificate of need program may have more or less authority than that, depending upon the State's program. We believe each State should define the review responsibilities of its hearing officers.

Section 123.412 Criteria for State Agency review.

A commenter recommended that a proposed service not addressed in a State health plan not be automatically denied. Section 123.407 provides that a proposal may not be approved if it is inconsistent with the State health plan. Since a proposed new service not addressed in the State health plan is not necessarily inconsistent with that plan, such a proposal should not be disapproved on that basis.

Section 123.412(a) (5) and (6) contain considerations related to access to health care that must be addressed in a State's review criteria. One commenter argued that § 123.412(a)(6) of the regulations goes beyond the statutory authority. The authority of this provision rests with sections 1532(c) (3) and (c)(6)(E) of the Act. This issue was discussed at some length in the Appendix to the 1980 amendments to these regulations (45 FR 69768 (October 21, 1980)).

One commenter asked that a reference to the elderly and children be added to § 123.412(a)(6)(ii). Section 123.412(a)(6) provides that a State Agency shall consider the contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have experienced difficulties in obtaining equal access to health services. In determining the extent to which the proposed service is accessible, the State Agency considers the performance to the applicant in meeting its obligations to provide services arising from the applicant's having received Federal financial assistance. Section 123.412(a)(6)(ii) lists examples of these obligations, e.g., the obligation to provide handicapped persons access to programs for which Federal financial assistance was received. One example not included in the list is the obligation of recipients of Federal financial assistance not to discriminate on the basis of age because such discrimination would violate the Age Discrimination Act of 1975. The Secretary has decided to adopt this commenter's suggestion and make a reference to nondiscrimination on the basis of age to make clear that, when reviewing an application, the State Agency shall consider the applicant's compliance.

Some commenters expressed concern that the considerations regarding access contained in §§ 123.412(a) (5) and (6) had to be met before a certificate of need may be issued. One commenter stated that the Secretary was requiring that a facility maintain a specified percentage of patients from medically underserved populations. Neither view is correct. A State Agency is not required to find that all criteria have been satisfied before it may issue a certificate of need. These are factors that a State Agency must consider in making its decision, not conditions of approval. Moreover, the State Agency might find that medically-underserved populations have access to the facility even though they do not use the facility to the extent they are represented in the population.

One commenter criticized the regulations because they focused on the accessibility of the facility as a whole, rather than the particular service being proposed. The Secretary believes that the accessibility of an individual proposed service cannot be considered apart from the accessibility of the facility as a whole. For this reason, the accessibility of the facility as a whole needs to be considered.

A commenter claimed that these regulations inappropriately involve health planning agencies in civil rights and Hill-Burton enforcement. Another commenter said that a planning agency should not consider a civil rights complaint without a finding that a violation has occurred. In these regulations, State Agencies are directed to consider the factors identified, not to police performance under these other programs. These factors are related to access to health care, and we believe that they cannot be overlooked when weighing community need for a project under review. With respect to the consideration of civil rights complaints, we expect that a State Agency will consider the status of the complaints in the adjudication process when it reviews the application.

Section 123.413 Required findings on access.

Several commenters addressed the requirement that a State Agency make a written finding on the extent to which the project will meet the State Agency's criteria based on the considerations in § 123.412(a) (5) and (6). One commenter criticized the emphasis placed on these considerations in the proposed rule. Another asked that the written findings apply to the project only and not take into account the accessibility to the entire facility. As mentioned earlier, this

section, including the issues raised by the commenters, is discussed thoroughly in the Appendix to the 1980 amendments to the certificate of need regulations (45 FR 69772, October 21, 1980). As explained there, we believe that the accessibility of a facility to its community is an important consideration in evaluating the need for a proposed service. Further, the accessibility of the facility as a whole bears on the accessibility of the proposal under review. For this reason, we do not agree that undue emphasis has been placed on this issue.

Effective Date Provisions

These amendments are effective February 13, 1985. Since none of the changes being made imposes additional requirements on States, any State that is currently meeting the Federal certificate of need requirements will continue to do so after these regulations become effective. If a State wants to do so, it may retain any of the procedural requirements or criteria that have been eliminated from the Federal regulations. States that wish to revise their procedures and criteria should bear in mind that § 123.409(c) still requires that the State Agency give persons an opportunity to comment on proposed changes before changes are adopted.

Regulatory Flexibility Act and Executive Order 12291

Because this final rule would lessen the regulatory burden on State Agencies and HSAs and provide the States with greater flexibility in the development of conforming certificate of need programs, it is anticipated that compliance with these regulatory requirements would decrease expenditures on the part of HSAs and State Agencies. The impact on entities providing health care will depend on the requirements States choose to maintain. In any event, the effect of these rules on both health planning agencies and providers of health care is expected to be minimal. Therefore, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis under the Regulatory Flexibility Act of 1980 is not required. Further, since these regulations do not meet any criteria for a major regulation under Executive Order 12291, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

Sections 122.307(a); 122.308(a)(2), (4), (5) and (9); 123.404(a)(5); 123.405(b)(2); 123.406(a), (b) and (d); 123.409(a); 123.410(a)(4) (5) and (15) of this rule

contain information collection or recordkeeping requirements which have been approved by the office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 0915-0070.

List of Subjects in 42 CFR Parts 122 and 123

Health planning, Health care.

Accordingly, 42 CFR Part 122, Subpart D, and 42 CFR Part 123, Subpart E, are amended in the manner set forth below.

Dated: May 8, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: October 30, 1984.

Margaret M. Heckler,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42 CFR, is amended by revising Subpart D to read as follows:

Subpart D—Certificate of Need Reviews

Sec.

122.301 Definitions.

122.302 Purpose and applicability.

122.303 General.

122.304 Scope of certificate of need review programs.

122.305 Health maintenance organizations (HMO's).

122.306 Required recommendations.

122.307 Adoption and public notice of review procedures and criteria.

122.308 Procedures for health systems agency review.

122.309 Exceptions to use of procedures.

122.310 Criteria for health systems agency review.

122.311 Required findings on access.

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 1501-1532, Public Health Service Act, sec. 936, Pub. L. 97-35, 95 Stat. 570-578 (42 U.S.C. 300k-1-300n-1)

Subpart D—Certificate of Need Reviews

§ 122.301 Definitions.

Terms used in this subpart shall have the meanings given them in Subpart A of this part and § 123.401 of this title.

§ 122.302 Purpose and applicability.

(a) Section 1513(f) of the Act requires each health systems agency to assist State Agencies in carrying out certificate of need programs under section 1523(a)(4)(B) of the Act. In doing so, health systems agencies are required to review and make recommendations to the appropriate State Agency respecting the need within the health service area for capital expenditures, new

institutional health services, and major medical equipment.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1513(f) of the Act, each health systems agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 122.303 General.

Each recommendation by the health systems agency to a State Agency to issue or not to issue a certificate of need or to withdraw a certificate of need must be based solely (a) on the review by the health systems agency conducted in accordance with procedures and criteria it has adopted under this subpart and (b) on the record of the administrative proceedings held on the application for the certificate or the State Agency proposal to withdraw the certificate.

§ 122.304 Scope of certificate of need review programs.

Each health systems agency shall conduct reviews of projects located or proposed to be located within its health service area and which are subject to review under the State certificate of need program under Subpart E of Part 123 of this title.

§ 122.305 Health maintenance organizations (HMOs).

(a) *Inclusion in health plans.* If an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall not recommend denial of the certificate of need (or otherwise made a finding under this subpart that the project is not needed) solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(b) *Required recommendation to approve.* Notwithstanding general review criteria established in accordance with § 123.412 of this title, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall recommend issuance of the certificate of need if it finds (in accordance with § 123.412(a)(13) of this title) that

(1) Issuance of the certificate of need is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and

(2) The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

§ 122.306 Required recommendations.

Under § 123.407 of this title, if an application is made for a certificate of need for a capital expenditure, a certificate of need must be issued if

(a) The capital expenditure is required to eliminate or prevent safety hazards, or to comply with licensure, certification, or accreditation standards, and

(b) If the State Agency determines (1) that the facility or service for which the capital expenditure is proposed is needed, and (2) that the obligation of the capital expenditure is not inconsistent with the State health plan. For those applications for which approval is sought under § 123.407 of this title, the health systems agency is required to make recommendations to the State Agency on whether the project meets the conditions in § 123.407(a).

Explanatory note.—For applications which meet the requirements of § 123.407(a), the health systems agency shall use procedures and apply criteria (to the extent applicable to enable it to make a recommendation on need) as required by this subpart. Health systems agencies may wish to expedite the reviews of applications intended to correct deficiencies which pose a threat to the public health. In so doing, health systems agencies may use any exceptions to the required review procedures which have been approved under § 122.309. See also the explanatory note which follows § 123.407.

§ 122.307 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt, publish, review and revise as necessary, review procedures and criteria in accordance with paragraph (b) of this section prior to conducting reviews.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of the procedures and criteria, the health systems agency shall give interested persons an opportunity to offer comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

§ 122.308 Procedures for health systems agency review.

(a) The procedures adopted and used by a health systems agency for

conducting the reviews covered by this subpart must include at least the following:

(1) *Review schedule.* Review of applications in accordance with a schedule established by the State Agency under § 123.410(a)(1) of this title, including the consideration together of applications that have been batched (see § 123.410(a)(1)) under the State Agency schedule.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons and to the State Agency of the beginning of a review, and, if a person has asked the health systems agency to place the person's name on a mailing list maintained by the health systems agency, notification to the person.

(3) *Review period.* Schedules which provide that no review shall take longer than the period specified by the appropriate State Agency under § 123.410(a)(3) of this title. If, after a review has begun, the health systems agency requires the applicant to submit additional information, it shall give the applicant at least fifteen days to submit the information. The health systems agency shall notify the applicant that the applicant may request that the State Agency extend the review period at least fifteen days.

(4) *Information requirements.* Provision for persons subject to a review to submit to the health systems agency, in the form and manner and containing the information which the health systems agency shall prescribe and publish, any information that the health systems agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The health systems agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The health systems agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the health systems agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings.* Provision for written findings (including, as applicable, the required findings under § 122.305(b)) which state the basis for

any recommendation made by the health systems agency. The health systems agency shall send written findings to the applicant and to the State Agency for the State in which the project is proposed, and to others upon request.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the health systems agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing in the course of review (and before the health systems agency makes its recommendation to the State Agency) if requested by any affected person.

(9) *Regular reports of the health systems agency.* Preparation and publication of regular reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and recommendations made in the course of those reviews.

(10) *Public access.* Access by the general public to all applications reviewed by the health systems agency and to all other written materials essential to any health systems agency review.

(11) *Conflict of interest.* In the exercise of any reviews under this subpart, no member of a governing body, executive committee, or any entity appointed by a governing body or executive committee may vote on any matter respecting an applicant with which the member has (or within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship to make a written disclosure of the relationship before any action is taken by the body, committee, or entity with respect to the applicant and to make the relationship public at any meeting in which action is to be taken with respect to the applicant.

(12) *Coordination with the MSA.* Each health systems agency whose health service area includes part of a metropolitan statistical area (as determined by the Office of

Management and Budget) shall coordinate its certificate of need review activities with all other health systems agencies whose health service areas include part of the metropolitan statistical area. This coordination shall include at least an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt in accordance with § 122.307.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(2) of this section shall be considered satisfied if the appropriate State Agency, in providing notice of the beginning of the review under § 123.410(a)(2) of this title, provides the information described in paragraph (a)(2) of this section.

(d) The procedures may provide that the requirements of paragraph (a) (4) or (5) of this section shall be considered satisfied if the appropriate State Agency has provided for the corresponding procedure found at § 123.410(a) (4) or (5) of this title.

(Approved by Office of Management and Budget under Control Number 0195-0079)

§ 122.309 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under § 122.308 either in response to a written request from the health systems agency or as a general exception of which any health systems agency may avail itself. In approving a general exception the Secretary will establish substitute procedures where appropriate. Before availing itself of a general exception approved by the Secretary, the health systems agency shall follow the notice and comment procedures of § 122.308(b).

(b) Before approving the request, the Secretary will determine that the procedures to be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

§ 122.310 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based at least on the general considerations listed under § 123.412(a) of this title, except that in the case of an HMO or an ambulatory care facility or health care facility controlled, directly

or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in § 123.412(a)(12) of this title. The health systems agency may not adopt any additional criteria which are inconsistent with those criteria based on the general considerations listed under § 123.412(a).

(b) Health systems agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 122.311 Required findings on access.

(a) For each project described in § 123.413(a) of this title for which the health systems agency recommends issuance of a certificate of need, the health systems agency shall make a written finding (which must take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the health systems agency's criteria based on the considerations in § 123.412(a) (5) and (6).

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42 CFR, is amended by revising Subpart E to read as follows:

Subpart E—Certificate of Need Reviews

Sec.	
123.401	Definitions.
123.402	Purpose and applicability.
123.403	General.
123.404	Scope of certificate of need review programs.
123.405	Health maintenance organizations (HMO's).
123.406	Notice of intent.
123.407	Required approvals.
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123.409	Adoption and public notice of review procedures and criteria.
123.410	Procedures for State Agency review.
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123.412	Criteria for State Agency review.
123.413	Required Findings on Access.

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); secs. 1501-1532, Public Health Service Act, Sec. 936, Pub. L. 97-35, 95 Stat. 570-576 (42 U.S.C. 300k-1-300n-1)

Subpart E—Certificate of Need Reviews

§ 123.401 Definitions.

In addition to the terms defined in Subpart A of this Part, as used in this subpart:

The term "capital expenditure" means an expenditure made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

The term "expenditure minimum for capital expenditures" means \$600,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, \$600,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "expenditure minimum for annual operating costs" means \$250,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, \$250,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "health" includes physical and mental health.

The term "health care facility" means hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. Further:

(1) The term "hospital" means an institution which primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(3) The term "tuberculosis hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which primarily provides

to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(7) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

The term "health maintenance organization" or "HMO" means a public or private organization organized under the laws of any State,

(1) Which is a qualified health maintenance organization under section 1310(d) of the Act, or

(2) Which: (i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out of area coverage; and

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (2)(i) of this definition to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily (A) directly through physicians who are either employees or partners of the organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

The term "health services" means clinically related (i.e., diagnostic,

treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

The term "major medical equipment" means medical equipment which is used to provide medical and other health services and which costs more than \$400,000. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than \$400,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment shall be included.

Note.—The acquisition of equipment which does not meet the definition of major medical equipment and thus is not subject to review under § 123.404(a)(4), will be subject to review if it meets any other requirement under § 123.404(a).

The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

§ 123.402 Purpose and applicability.

(a) Section 1523(a)(4)(B) of the Act requires each State health planning and development agency (State Agency) to administer a State certificate of need program which (1) applies to the obligation of capital expenditures within the State, the offering within the State of new institutional health services, and the acquisition of major medical equipment, and (2) is consistent with regulations of the Secretary. This subpart sets forth the requirements and standards that a State certificate of need program must meet. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1523(a)(4)(B) of the Act, each State Agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 123.403 General.

(a) Each State Agency shall administer within the State a certificate of need program meeting the requirements of this subpart.

(b) Only the State Agency (or the appropriate administrative or judicial review body) may issue, deny or withdraw certificates of need, grant exemptions from certificate of need reviews, or determine that certificate of need reviews are not required.

(c) In issuing or denying certificates of need or in withdrawing certificates of need, the State Agency shall take into account recommendations made by health systems agencies under Subpart D of Part 122 of this title.

(d) Each decision of the State Agency (or the appropriate administrative or judicial review body) to issue a certificate of need must be consistent with the State health plan, except in emergency circumstances that pose an imminent threat to public health.

(e) Each decision of a State Agency to issue, deny, or withdraw a certificate of need must be based (1) on the review by the State Agency conducted in accordance with procedures and criteria it has adopted under this subpart, and (2) on the record of the administrative proceedings held on the application for the certificate or the State Agency's proposal to withdraw the certificate. Each decision of a State Agency to grant or deny an exemption under § 123.405 (HMOs) must be made in accordance with the State Agency's procedures for reviewing applications for exemptions and must be based solely on the record of the administrative proceedings held on the application.

§ 123.404 Scope of certificate of need review programs.

(a) *Required coverage.* The State certificate of need program must apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment. For purposes of this subpart, "the obligation of capital expenditures, offering of new institutional health services, and acquisition of major medical equipment" means the following:

(1) *Capital expenditures that exceed the expenditure minimum.* The obligation by or on behalf of a health care facility of any capital expenditure (other than to acquire an existing health care facility) that exceeds the expenditure minimum for capital expenditures (or any lesser amount the State may specify). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the

expenditure exceeds the expenditure minimum. (Note that the acquisition of an existing health care facility may be subject to review as provided for under § 123.404(a)(5)).

(2) *Bed capacity.* The obligation of any capital expenditure by or on behalf of a health care facility which substantially changes the bed capacity of the facility with respect to which the expenditure is made.

(3) *Health services.* (i) The obligation of any capital expenditure by or on behalf of a health care facility which substantially changes the health services of such facility, or (ii) The addition of a health service which is offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within a period determined by the State Agency before the service would be offered, and which entails annual operating costs of at least the expenditure minimum for annual operating costs.

(4) *Major medical equipment.* (i) The acquisition by any person of major medical equipment that will be owned by or located in a health care facility; or

(ii) The acquisition by any person of major medical equipment not owned by or located in a health care facility, if (A) the notice of intent required by § 123.406(a) is not filed in accordance with that paragraph, or (B) the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(a), that the equipment will be used to provide services for inpatients of a hospital.

(iii) An acquisition of major medical equipment need not be reviewed if it will be used to provide services to inpatients of a hospital only on a temporary basis in the case of (A) a natural disaster, (B) a major accident, or (C) equipment failure.

(iv) A State program that did not, by September 30, 1982, cover major medical equipment not owned by or located in a health care facility beyond the minimum coverage required by this subparagraph may not be changed to include additional requirements for coverage of this equipment.

(5) *Acquisitions of health care facilities.* (i) Except as provided in § 123.405(b) (HMOs), the obligation of a capital expenditure by any person to acquire an existing health care facility (A) if the notice of intent required at § 123.406(b) is not filed in accordance with that paragraph, or (B) if the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(b), that the services or bed capacity of the facility will be changed in being acquired.

(ii) Each State Agency shall specify, for purposes of the preceding sentence, what activities result in a change in the services or bed capacity of a health care facility.

(b) *Leases, donations, and transfers.*

An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if the acquisition would be subject to review under paragraph (a) of this section if made by purchases. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review under paragraph (a) of this section.

(c) *Incurring an obligation.* No person may incur an obligation for a capital expenditure that is subject to review under paragraphs (a)(1), (a)(2), (a)(3)(i), or (a)(5) of this section without obtaining a certificate of need for the capital expenditure.

(d)(1) *Research activities.* The State certificate of need program need not apply to the acquisition by a health care facility of major medical equipment to be used solely for research, the offering of an institutional health service by a health care facility solely for research, or the obligation of a capital expenditure by a health care facility to be made solely for research if the acquisition, offering, or obligation does not—(i) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research; (ii) substantially change the bed capacity of the facility; or (iii) substantially change the medical or other patient care services or the facility which were offered before the acquisition, offering, or obligation.

(2)(i) Before a health care facility acquires major medical equipment to be used solely for research, offers an institutional health service solely for research, or obligates a capital expenditure solely for research, the health care facility shall notify in writing the State Agency of the State in which the facility is located of the facility's intent and the use to be made of the medical equipment, institutional health service, or capital expenditure.

(ii) Paragraph (d)(1) of this section does not apply with respect to the acquisition of major medical equipment, the offering of institutional health services, or the obligation of a capital expenditure if—(A) the notice required by paragraph (d)(2)(i) of this section is not filed with the State Agency, or (B) the State Agency finds, within 60 days after the date it receives a notice in accordance with paragraph (d)(2)(i) of this section that the acquisition, offering, or obligation will have the effect or

make a change described in paragraph (d)(1) (i), (ii), or (iii) of this section.

(3) If major medical equipment is acquired, an institutional health service is offered, or a capital expenditure is obligated and a certificate of need is not required for the acquisition, offering, or obligation as provided in paragraph (d)(1) of this section, the equipment, the service, or equipment or facilities acquired through the obligation of the capital expenditure, may not be used in such a manner as to have the effect or to make a change described in paragraph (d) (1) (i), (ii), or (iii) of this section unless the State Agency issues a certificate of need approving such use.

(4) For purposes of this paragraph, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

(Approved by Office of Management and Budget under Control Number 0915-0070)

§ 123.405 Health maintenance organizations (HMOs).

(a) *Required coverage.* With respect to an HMO or a health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the State Agency shall review any activity specified in § 123.404 which is undertaken by or on behalf of an inpatient health care facility (unless these activities are exempt under paragraph (b)(1) of this section). In addition, the State Agency shall review the acquisition of major medical equipment by an ambulatory care facility of an HMO to the extent required by § 123.404(a)(4) and § 123.404(d)(2) (unless the acquisition is exempt under paragraph (b)(1) of this section). A State program may not exceed the coverage specified in this paragraph.

Explanatory note.—A list of examples illustrating this coverage follows: (1) Major medical equipment acquired by HMOs which is not owned by or located in a health care facility and which is used primarily for inpatients of a hospital must be reviewed (unless the project is exempt); further, major medical equipment acquired by an HMO and located in a health care facility must be reviewed (unless the project is exempt). (2) A capital expenditure for an ambulatory clinic proposed by an HMO where the proposed expenditure is not by or on behalf of an inpatient health care facility is not subject to review. (3) The establishment of an HMO is not subject to certificate of need review. (4) Any capital expenditure exceeding the expenditure minimum by or on behalf of an HMO's inpatient health care facility must be reviewed (unless the project is exempt). (5) A capital expenditure associated with a substantial change in the bed capacity of an

HMO's hospital must be reviewed (unless the project is exempt).

(b) *Exemptions*—(1) *Exemptions from review.* The State Agency shall exempt from review any activity described in paragraph (a) of this section if the applicant meets the requirements of paragraph (b)(2) of this section and if the activity is proposed to be undertaken by:

(i) An HMO or a combination of HMOs if (A) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in the HMO or combination of the HMOs and (B) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(ii) A health care facility if (a) the facility primarily provides or will provide inpatient health services, (B) the facility is or will be controlled, directly or indirectly, by an HMO or a combination of HMOs (C) the facility is or will be geographically located so that the service will be reasonably accessible to the individual enrolled in the HMO or combination, and (D) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(iii) A health care facility (or portion thereof) if (A) the facility is or will be leased by an HMO or combination of HMOs which has, on the date the application is submitted under paragraph (b)(2) of this section, at least fifteen years remaining in the term of the lease, (B) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (C) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO.

(2) *Application for exemption.* (i) An activity of an HMO, combination of HMOs, or health care facility shall not be exempt under paragraph (b)(1) of this section unless—

(A) The applicant has submitted, at the time and in the form and manner prescribed by the State Agency, an application for an exemption to the State Agency and the appropriate health systems agency,

(B) The application contains the information respecting the HMO, combination, or facility and the proposed offering, acquisition, or obligation that the State Agency may

require to determine if the HMO or combination meets the requirements of paragraph (b)(1) of this section or the facility meets or will meet those requirements, and

(C) The State Agency approves the application.

(ii) The State Agency shall approve an application submitted under this paragraph if the applicable requirements of paragraph (b)(1) of this section have been met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) *Sale, lease, acquisition, or use of exempt facilities or equipment.* The State program must provide that a health care facility (or portion thereof) or medical equipment for which an exemption was granted under paragraph (b)(1) of this section may not be sold or leased, a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, and a health care facility described in paragraph (b)(1)(iii) of this section which was exempted under paragraph (b)(1) of this section may not be used by any person other than the lessee described in paragraph (b)(1)(iii), unless,

(i) The State Agency issues a certificate of need for the sale, lease, acquisition, or use, or

(ii) The State Agency determines, upon application, that with respect to the facility or equipment, the entity which intends to buy or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it meets the requirements of paragraph (b)(1)(i) (A) and (B) of this section or; the entity is a health care facility which meets the requirements of paragraph (b)(1)(ii) (A) and (C) of this section, and with respect to its patients meets the requirements of (b)(1)(ii)(D) of this section.

(4) *Method of payment.* The method of payment for services (i.e., prepaid or fee-for-service) is not relevant in determining whether an activity is subject to review under this subpart.

(c) *Inclusion in health plans.* In an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, a State Agency may not disapprove the application solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(d) *Required approval.* Notwithstanding general review criteria established in accordance with § 123.412, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a

certificate of need, the State Agency shall approve the application if it finds (in accordance with § 123.412(a)(12)) that (1) approval of the application is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (2) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

(e) *Sale, acquisition, or lease of approved facilities or equipment.* The State program must provide that except as provided in paragraph (b)(2) of this section and notwithstanding § 123.406, a health care facility (or portion thereof) or medical equipment for which a certificate of need was issued under this section may not be sold or leased, and a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, unless the State Agency issues a certificate of need for the sale, acquisition or lease.

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§ 123.406 Notice of intent.

The State program must provide as follows:

(a) *Major medical equipment.* At least 30 days before any person enters into a contract to acquire major medical equipment which will not be owned by or located in a health care facility, the person shall notify the State Agency of the State in which the equipment will be located and the appropriate health systems agency of the person's intent to acquire the equipment and of the use that will be made of the equipment (see § 123.404(a)(4)(ii)). The notice must be in writing and contain all information the State Agency requires in accordance with § 123.410(a)(4).

(b) *Acquisition of health care facilities.* At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the State Agency of the State in which the facility is located and the appropriate health systems agency of the person's intent to acquire the facility and of the services to be offered in the facility and its bed capacity (see § 123.404(a)(5)). The notice must be made in writing and must contain all information the State Agency

requires in accordance with § 123.410(a)(4).

(c) *Construction projects.* The State Agency shall have procedures for persons proposing construction projects to submit to the State Agency and the appropriate health systems agency, as early as possible in the course of planning the project, a notice of intent in as much detail as may be necessary to inform the agencies of the scope and the nature of the project.

(d) *Actions undertaken solely for research.* If the State program exempts from review research activities as provided in § 123.404(d), at least 60 days before a health care facility (1) acquires major medical equipment, (2) offers an institutional health service or (3) obligates a capital expenditure, solely for research purposes, the health care facility shall notify the State Agency of the State in which the equipment will be located, the institutional health service will be offered, or the capital expenditure will be obligated and the appropriate health systems agency of the health care facility's intent to acquire, to offer or to obligate. The notice must be made in writing and must contain all information the State Agency requires in accordance with § 123.410(a)(4).

§ 123.407 Required approvals.

(a) Except as provided in paragraph (b) of this section, the State Agency shall issue a certificate of need for a proposed capital expenditure if

(1) The capital expenditure is required (i) to eliminate or prevent imminent safety hazard as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that Act, and

(2) The State Agency has determined that (i) the facility or service for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is not inconsistent with the State health plan.

Explanatory note.—For applications which meet the requirements of § 123.407(a), the State Agency shall use procedures and apply criteria (to the extent they are appropriate to determine need) as required by this subpart. If the State Agency determines that the facility or service for which the expenditure is proposed is not needed (and thus that the expenditure to correct the deficiency is not needed), it must deny the certificate of need as required by § 123.408(a). If the State Agency determines that the expenditure is

inconsistent with the State health plan, it must deny the certificate of need unless there is an emergency that poses an imminent threat to public health (see § 123.403(d)). Even in such a case, there is no requirement that the State Agency issue a certificate of need. The State Agency should consider alternative means of dealing with the threat to public health. State Agencies may wish to expedite the review of applications intended to correct deficiencies which pose a threat to the public health. In so doing, State Agencies may use any exceptions to the required review procedures which have been approved under § 123.411.

(b) Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review using the criteria developed under § 123.412.

§ 123.408 Enforcement.

(a) The State certificate of need program must provide that (1) State Agencies may only issue a certificate of need for those obligations of capital expenditures, offerings of institutional health services, and acquisitions of major medical equipment which are found to be needed; and (2) persons may only obligate capital expenditures, offer institutional health services or acquire major medical equipment after a certificate of need is issued or an exemption under § 123.405(b) is obtained; and (3) persons may not obligate capital expenditures, offer institutional health services, or acquire major medical equipment if a certificate of need authorizing that obligation, offering, or acquisition has been withdrawn by the State Agency.

(b) The State certificate of need program must provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to ensure compliance with paragraph (a) of this section.

§ 123.409 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt, publish, review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to conducting reviews.

(b) The State Agency, the Statewide Health Coordinating Council, and the health systems agencies within the State shall cooperate in the development of procedures and criteria under this subpart to the extent appropriate to achieve efficient reviews and consistent criteria for reviews.

(c) Before adopting the review procedures and criteria required by this subpart or any revisions of the

procedures and criteria, the State Agency shall give interested persons an opportunity to offer comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

§ 123.410 Procedures for State Agency review.

(a) The procedures adopted and used by a State Agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Schedules for submitting applications.* Establishment of a schedule for submission of applications to the State Agency. The schedule must provide for the review of all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other ("batched") at least twice a year. Applications which satisfy the requirements of § 123.407(a) for required approval are not required to be batched.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons of the beginning of a review, and, if a person has asked the State Agency to place the person's name on a mailing list maintained by the State Agency, notification to the person.

(3) *Review period.* Schedules which provide for starting reviews in a timely fashion and which establish the period within which the State Agency will approve or disapprove applications for certificates of need and for exemptions under § 123.405(b).

(i) If, after a review has begun, the State Agency or the health systems agency requires the applicant to submit additional information, that agency shall give the applicant at least fifteen days to submit the information, and upon request of the applicant, the State Agency shall extend its review period at least fifteen days. This extension must apply to all other applications which have been batched with the application for which additional information is required.

(ii) The schedule must provide that no certificate of need review shall, to the extent practicable, take longer than 90 days from the date the review period begins.

(4) *Information requirements.* Provision for persons subject to a review to submit to the State Agency, in the form and manner and containing the information which the State Agency shall prescribe and publish, any information that the State Agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which

a particular review is being conducted or the type of health service being reviewed.

(ii) The State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The State Agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the State Agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings and conditions.* Provision for written findings (including, as appropriate, the required findings under § 123.405(d) and § 123.413(a)) which state the basis for any final decision made by the State Agency. When a certificate of need is to be issued, these findings must include the finding of need required by § 123.408(a)(1). The State Agency may not make its final decision subject to any condition unless the condition directly relates to criteria established under § 123.412 or criteria prescribed by regulation by the State Agency in accordance with an authorization under State law. The State Agency shall send written findings to the applicant and to the health systems agency for the health service area in which the project is proposed, and shall make them available to others upon request.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the State Agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing by the State Agency in the course of agency review (and before the State Agency makes its decision) if requested by any affected person.

(i) In a hearing, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter may conduct reasonable questioning of persons who make relevant factual allegations.

(ii) The agency shall maintain a record of the hearing.

(9) *Ex parte contacts.* Provision that, after the commencement of a hearing under paragraphs (a)(8) and (a)(11) of

this section and before a decision is made, there shall be no ex parte contacts between (i) any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance or in favor of withdrawal of a certificate of need and (ii) any person in the State Agency who exercises any responsibility respecting the application or withdrawal.

(10) *Statement of reasons.* Provision that if the State Agency makes a decision which is inconsistent with a recommendation made by the health systems agency, the goals of the applicable health systems plan, or the priorities of the applicable annual implementation plan, the State Agency shall submit to the health systems agency and to the applicant a written, detailed statement of the reasons for the inconsistency.

(11) *Public hearings for reconsideration of a State Agency decision.* Provision that any person may, for good cause shown (as determined by the State Agency), request in writing a public hearing for purposes of reconsideration by the State Agency of its decision.

(i) The State Agency shall make written findings which state the basis for its decision.

(ii) A decision of the State Agency following a public hearing under this subparagraph shall be considered a decision of the State Agency for purposes of paragraphs (a)(6), (a)(7), (a)(10), (a)(13), (a)(14), and (a)(15) of this section.

Note.—Nothing in these regulations requires that a person must request a public hearing for reconsideration of a State Agency decision before obtaining administrative review (see paragraph (a)(13) of this section) or judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(12) *Maximums on capital expenditures.* Provision that, in issuing a certificate of need, the State Agency shall specify the maximum capital expenditure which may be obligated under the certificate. The State Agency shall (i) prescribe the method used to determine capital expenditure maximums, (ii) establish procedures to monitor capital expenditures obligated under certificates, and (iii) establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

(13) *Review of State Agency decisions.* Provision that upon request of any affected person, the decision of the State Agency to issue, deny, or withdraw a certificate of need or to grant or deny an exemption shall be

reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

(i) The State Agency shall send the written findings of the reviewing entity to the person proposing the project, the person requesting the review, the appropriate health systems agency, and to others upon request.

(ii) The decision of the reviewing entity shall be considered the final decision of the State Agency. However, if permitted by applicable State law, the reviewing entity may remand the matter to the State Agency for further action or consideration.

Note.—Nothing in these regulations requires that a person must request administrative review before obtaining judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(14) *Judicial review.* Provision that any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption may, within a reasonable period of time after the decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court.

(i) The State court shall affirm the decision of the State Agency unless it finds it to be arbitrary or capricious or not made in compliance with applicable law.

(ii) Where State law governing the practices and procedures of administrative agencies provides that review of State Agency decisions (as required by paragraph (a)(13) of this section) is to be carried out by an appropriate State court, this subparagraph does not require that the State Agency provide for any further judicial review.

(15) *Regular reports of the State Agency.* Preparation and publication of regular reports by the State Agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of those reviews.

(16) *Public access.* Access by the general public to all applications reviewed by the State Agency and to all other written materials essential to any State Agency review.

(17) *Failure to act on an application within the required time.* Provision that if the State Agency fails to approve or disapprove an application for a certificate of need or an exemption under § 123.405(b) within the applicable period, the applicant may, within a reasonable period of time following the expiration of that period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application. A certificate of need or an exemption may not be issued or denied solely because the State Agency failed to reach a decision.

(18) *Withdrawal of a certificate of need.* Provision that an application for a certificate of need shall specify the time the applicant will require to make the service or equipment available or to complete the project and a timetable for making the service or equipment available or to complete the project. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application. If on the basis of this review the State Agency determines that the holder of a certificate is not meeting the timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate. In withdrawing a certificate of need, the State Agency shall follow the procedures at paragraphs (a)(2), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(13), (a)(14), and (a)(15) of this section.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(4) or (a)(5) of this section shall be considered satisfied if the appropriate health systems agency has provided for the corresponding procedure found at § 122.308(a) (4) or (5) of this title. The procedures of paragraph (a)(8) of this section shall be considered satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the health systems agency follows the procedures at paragraph (a)(8) of this section.

(Approved by Office of Management and Budget Control Number 0915-0070)

§ 123.411 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review

procedures under § 123.410 either in response to a written request from a State Agency or as a general exception of which any State Agency may avail itself. In approving a general exception, the Secretary will establish substitute procedures where appropriate.

(b) Before approving the request, the Secretary will determine that the procedures which will be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

§ 123.412 Criteria for State Agency review.

(a) The State Agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based only on the following general considerations, except that the State Agency may include any additional criteria which it prescribes by regulation in accordance with and authorization under State law. In the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in paragraph (a)(12) of this section.

(1) The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan, and State health plan.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

(3) The availability of less costly or more effective alternative methods of providing the services to be offered, expended, reduced, relocated, or eliminated.

(4) The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs of and charges for providing health services by the person proposing the service.

(5)(i) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services.

(ii) In cases, including those involving relocation of a facility or service, where a State determines that a reduction or elimination of a service is reviewable, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the

reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, to obtain needed health care.

(6) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

(i) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(ii) The performance of the applicant in meeting its obligation under applicable civil rights statutes prohibiting discrimination on the basis of race, color, national origin, handicap, sex (in education programs), and age, and implementing regulations 45 CFR Parts 80, 84, 86 and 91, and obligations (if any) concerning community service and the provision of uncompensated care pursuant to 42 CFR Part 124 (including the existence of any civil rights access complaints against the applicant);

(iii) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(iv) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

Note.—Where appropriate, the State Agency may also consider other access issues, such as: (1) The extent to which the applicant grants medical staff privileges to physicians who serve the medically underserved; and (2) the extent to which the applicant takes action necessary to remove barriers that limit access to the health services of the applicant. These barriers may include unavailability of public transportation; absence of translation services where a substantial portion of the population of the health service area does not

speak English as its primary language; building designs that substantially hinder use of the facility; and financial barriers (e.g., preadmission deposits).

(7) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

(8) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan.

(9) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(10) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(11) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(12) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the Organization; and

(ii) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from those providers:

(A) Would be available under a contract of at least five years duration;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. [For example—whether physicians associated with the HMO have or will

have full staff privileges at a non-HMO hospital];

(C) Would cost no more than if the services were provided by the HMO; and

(D) Would be available in a manner which is administratively feasible to the HMO.

(13) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(14) The special circumstances of health care facilities with respect to the need for conserving energy.

(15) In accordance with section 1502(b) of the Act, the factors which affect the effect of competition on the supply of the health services being reviewed.

(16) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b) of the Act, and serve to promote quality assurance and cost effectiveness.

(17) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(18) In the case of existing services or facilities, the quality of care provided by those facilities in the past.

(19) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship and residency training levels.

Explanatory note.—This provision seeks to ensure that the need for and availability of services and facilities for osteopathic physicians and patients will be considered.

(b) State Agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 123.413 Required findings on access.

(a) Under § 123.412 (a)(5) and (a)(6), the State Agency is required to develop criteria based on considerations relating to the need of the population to be served for the proposed project and the extent to which the residents of the area will have access to the project. For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria developed based on the considerations in § 123.412(a) (5) and (6), except in the following cases: (1) Where the project is one described in § 123.407(a) [projects to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards]; or (2) Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or (3) Where the project is proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

(b) In any case where the State Agency finds that an approved project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) and (6), it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

(c) When this written finding is required, the State Agency, in evaluating the accessibility of the project, must take into account the current accessibility of the facility as a whole. If the State Agency disapproves a project for failure to meet the need and access criteria, it must so state in its written findings under § 123.410(a)(6).

(d) In any case where the State Agency finds that a project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) and (6), it shall so notify in writing the applicant and the appropriate Regional Office of the Department of Health and Human Services.

[FR Doc 85-980 Filed 1-11-85; 8:45 am]

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federal register

**Monday
January 14, 1985**

Part IV

Environmental Protection Agency

**Sole Source Aquifers; Final
Determinations; California and New York;
Notice**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2631-5b]

Schenectady/Niskayuna Aquifer System in Schenectady, Saratoga, and Albany Counties, NY; Sole Source Aquifer; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Schenectady/Niskayuna Aquifer System, underlying portions of Albany, Saratoga and Schenectady Counties, New York, is the sole or principal source of drinking water for Ballston (Lake), Burnt Hills, Charlton, Glenville, Niskayuna, Rexford, Rotterdam, Schenectady and Scotia and that this aquifer, if contaminated would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the Schenectady/Niskayuna Area and its stream flow source zone (upstream portions of the Mohawk River drainage basin) will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on January 28, 1985. This determination shall become effective on February 27, 1985.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Drinking/Ground Water Protection Branch, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda, Drinking/Ground Water Protection Branch, Environmental Protection Agency, Region II at 212-264-1800.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., U.S.C., 300f, 300h-3(e), Pub. L. 93-523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a

significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On August 20, 1982, EPA received a petition from Mr. Frank J. Duci, ex-Mayor for the City of Schenectady, which petitioned EPA to designate the Schenectady or Great Flats Aquifer as a sole source aquifer. On January 26, 1983, EPA published a notice in the **Federal Register** which served to reprint the petition, to announce a public comment period and to set a public hearing date. A public hearing was conducted on March 3, 1983 and the public was permitted to submit comments and information on the petition until April 4, 1983.

II. Basis for Determination

Among the factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) are: (1) Whether the Schenectady/Niskayuna Aquifer System is the area's sole or principal source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The Schenectady/Niskayuna Aquifer System currently serves as the "sole source" of drinking water for approximately 147,000 persons in the service area.
2. There is no existing alternative drinking water source or combination of sources which provides fifty percent or more of the drinking water to the designated area, nor is there any available cost effective future source capable of supplying the drinking water demands for the Mohawk River communities.
3. The Schenectady/Niskayuna Aquifer System, which consists of a complex series of discontinuous coarse sand and gravel deposits, is underlain by glacial till. An extensive sand unit separates the coarse gravel unit from the till in much of the well field area. As a result of its highly permeable soil characteristics, the aquifer is susceptible to contamination through its recharge

zone from a number of sources, including, but not limited to, chemical spills, highway and urban area runoff, septic systems, leaking storage (above and underground) tanks, and landfill leachate. Since ground water contamination can be difficult or sometimes impossible to reverse and since the aforementioned communities rely on the Schenectady/Niskayuna Aquifer System for drinking water purposes, contamination of the aquifer would pose a significant public health hazard.

III. Description of the Schenectady/Niskayuna Aquifer System of the Albany, Schenectady and Saratoga Counties area, Their Recharge Zone and Their Streamflow Source Zone

The Schenectady/Niskayuna Aquifer System is composed of permeable sand and gravel deposits overlying glacial till. The system occupies approximately 30 square miles of the lowermost part of the Mohawk River drainage basin in New York State. The area in which Federal financially assisted projects will be subject to review is the portion of the Schenectady/Niskayuna Aquifer System in the Albany, Schenectady and Saratoga Counties area, the recharge zone and the streamflow source zone.

For purposes of this designation, the Schenectady/Niskayuna Aquifer System is considered to include the entire municipalities of Ballston, Burnt Hills, Charlton, Glenville, Niskayuna, Rexford, Rotterdam, Schenectady and Scotia, New York. The recharge zone is considered to be several very permeable portions of the aquifer within Albany, Schenectady and Saratoga Counties. The streamflow source zone is that portion of the Mohawk River drainage basin composing the upstream headwaters area for the Albany, Schenectady and Saratoga Counties area.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Drinking/Ground Water Protection Branch, 26, Federal Plaza, New York 10278.

V. Project Review

EPA Region II is working with the Federal agencies that may in the future provide financial assistance to projects

in the area of concern. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Schenectady/Niskayuna Aquifer System, upon which the Ballston, Burnt Hills, Charlton, Glenville, Niskayuna, Rexford, Rotterdam, Schenectady and Scotia areas are dependent for their sole source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the ground water quality of the Schenectady/Niskayuna Aquifer System, upon which the Ballston, Burnt Hills, Charlton, Glenville, Niskayuna, Rexford, Rotterdam, Schenectady and Scotia areas are dependent for their sole source water supply. Included in the review of any Federal financially assisted project will be the coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

Most of the comments received from the public were in favor of the designation. However, three commenters expressed some opposition.

One commenter felt that the existing regulations are more than sufficient to protect the aquifer area and that more regulations would have a devastating effect on the local construction industry.

Another commenter also felt that the aquifer is adequately protected and that additional regulations would ban construction in the area.

Another commenter felt that the petitioning of the aquifer for designation as sole source was only a ploy used to

prevent the construction of a shopping mall in the area.

One commenter, although generally in favor of designation, felt that the aquifer area is already more than adequately protected, while other portions, such as recharge zones, need greater safeguard measures.

The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the residents of Albany, Schenectady and Saratoga Counties.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Albany, Schenectady and Saratoga County areas.

The only affected entities will be those Area-based businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the

requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of \$100 million of more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Schenectady/Niskayuna Aquifer System of the Albany, Schenectady and Saratoga County areas. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: January 4, 1985.
William D. Ruckelshaus,
Administrator.
[FR Doc. 85-987 Filed 1-11-85; 8:45 am]
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[FRL-2631-6]

Final Determination; Ground Water System of the Scotts Valley Area, Santa Cruz County, CA; Aquifer Determination

AGENCY: Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Santa Margarita Aquifer is the sole or principal source of drinking water for the Scotts Valley area and that this aquifer, if contaminated would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed anywhere in the Santa Margarita recharge zone will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on January 28, 1985. This determination shall become effective on February 27, 1985.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region 9, Water Management Division,

Fifth Floor, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: William M. Thurston, Program Support Branch (W-2), Water Management Division, Region 9, at (415) 974-8226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e), Pub.L. 93-523) the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Santa Margarita Formation is the sole or principal source aquifer for the City of Scotts Valley and surrounding area in northern California. Pursuant to Section 1424(e), Federal financially assisted projects constructed anywhere in the Santa Margarita Formation recharge zone will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states: If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such an aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not so contaminate the aquifer.

On September 7, 1977, EPA received a petition from Al Haynes, Chairperson of the Santa Cruz Regional Group of the Sierra Club to designate the Santa Margarita Formation as a sole or principal source aquifer. In response to receipt of the petition, EPA published notice in the **Federal Register** on August 18, 1978, announcing receipt of the petition and requesting public comment. No comments were received by EPA during the ensuing 90-day comment period. The regional office made the decision that a report summarizing existing hydrogeologic data would be necessary prior to a determination on the petition. In 1979, EPA contracted the U.S. Geological Survey (USGS) to conduct a literature review and compile a report summarizing and interpreting

the existing data. The USGS report was received by EPA in June, 1981. EPA then prepared a report on the aquifer which concluded that the aquifer met federal criteria for designation. On August 27, 1982, EPA published notice in the **Federal Register** which announced the proposed designation, requested comments, and set the date for a public hearing. A public hearing was held on September 28, 1982, and the public was invited to submit comments pertinent to the proposal through October 12, 1982.

II. Basis for Determination

Among the factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) of the Safe Drinking Water Act are: (1) Whether the aquifer is the area's sole or principal source of drinking water, and (2) whether continuation of the aquifer would create a significant hazard to public health. On the basis of information available to this Agency, which includes analysis of technical data and public comment, the Administrator has made the following findings, which serve as the base of the determination noted above.

1. The Santa Margarita Formation currently serves as the sole or principal source of drinking water for the Scotts Valley area, providing ninety percent of the water supply for more than 14,300 residents within the City of Scotts Valley and the surrounding area.

2. There is no existing alternative drinking water source or combination of sources, which provides fifty percent or more of the drinking water to the designated area. Furthermore, no reasonably available alternative source exists which is capable of supplying the area's drinking water needs.

3. The Santa Margarita Formation aquifer consists of unconsolidated, friable, medium- to coarse-grained sandstone which contains interbeds of granule- to small pebble-sized material. Ground water is located near the ground surface under water table conditions throughout much of the area. The aquifer is moderately to highly permeable and is thus susceptible to contamination through the recharge zone. Sources of contamination include, but are not limited to, on-site septic tanks and leach fields used for residential waste disposal. Nitrate contamination has been documented at numerous wells throughout the area. Two public drinking water supply wells were closed in 1981 due to excessive nitrate concentrations. Because ground water contamination may be difficult or impossible to reverse, and because the Santa Margarita Formation constitutes the principal water supply source for the

general population, contamination would create a significant hazard to public health.

III. Description of the Santa Margarita Aquifer and Recharge Zone

The Santa Margarita Aquifer is located in the Scotts Valley area which is in the central portion of Santa Cruz County, approximately 50 miles south of San Francisco, California. The recharge zone for the Santa Margarita Aquifer is roughly defined by the following physiographic features: the Zayante fault in the north, the San Lorenzo River in the west, and the Carbonera Creek Basin in the east. The Technical Support Document includes a map which defines the areal extent of the Santa Margarita Aquifer recharge zone.

IV. Information Utilized in the Determination

The information utilized in this determination includes the Petition submitted by the Santa Cruz Group of the Sierra Club, a detailed literature review of ground water occurrence in the Scotts Valley area and the Santa Cruz Basin, and written and verbal comments presented by the public. This data is available to the public and may be inspected during normal business hours at the Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

V. Project Review

EPA Region 9 will work with Federal agencies that in the future may provide financial assistance to the projects in the area of concern. Interagency procedures will be developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer. Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible, on any existing or future State and local control mechanisms in protecting the ground water quality of the aquifer.

Included in the review of any Federal financially assisted project, will be coordination with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary of Public Comments

Overall, public comments generally favored designation. Eight commenters clearly favored designation, three clearly opposed designation, and ten presented statements generally supporting protection of ground water resources in the Scotts Valley area. Clear opposition to the designation was expressed by one resident of Scotts Valley and by two representatives of the Scotts Valley Water District.

Commenters identified aquifers, other than the Santa Margarita Formation, which could currently or potentially provide drinking water for the Scotts Valley area. EPA responded that the Santa Margarita Formation currently contributes ninety percent of the area's drinking water supply and that, based on existing information, the four associated aquifers would be inadequate replacement sources if the Santa Margarita Formation were to become contaminated.

Commenters identified surface water projects which could potentially serve as alternative sources of drinking water for the Scotts Valley area. EPA responded that the projects were contingent upon water rights constraints, in-stream usage requirements, and varying levels of local precipitation. EPA further noted that these projects were merely in the proposal stage of development and probably would not be implemented within the foreseeable future. The Santa Margarita formation will remain the sole or principle source aquifer throughout the near future. Designation of the aquifer will significantly protect the aquifer from contamination.

Numerous commenters reported increasing nitrate concentrations at public wells and the closure of two wells in 1981. EPA responded that such occurrences support EPA's conclusion that the Santa Margarita Formation is susceptible to contamination.

One commenter expressed concern that the areal extent of the recharge zone as defined by EPA may be insufficient to protect the Santa Margarita Formation from ground water contamination. He suggested that the boundaries remain tentative and subject to revision pending future hydrogeologic investigations. EPA responded that the boundaries were based upon the best

data currently available and that it will provide reasonable protection of the Santa Margarita aquifer.

EPA has prepared a Responsiveness Summary which addresses the comments received at the public hearing or during the 90-day comment period.

VII. Economic and Regulatory Impact

Pursuant to provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact upon a substantial number of small entities. For the purposes of this Certification, the term "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Scotts Valley area. The only affected entities will be those businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small, isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated. Accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be substantial. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole or principal source aquifer review, will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing the potential for adverse effects on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity, in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of \$100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States enterprises to compete in domestic or export markets. Today's

action affects only the Scotts Valley area. It provides an additional review of ground water protection measures, whenever possible, for only those projects which request Federal financial assistance. This regulation was submitted to OMB for review under EO 12291.

Dated: January 4, 1985.
William D. Ruckelshaus,
Administrator.
[FR Doc. 85-988 Filed 1-11-85; 8:45 am]
BILLING CODE 6560-50-M

[FRL-2631-5a]

Clinton Street-Ballpark Valley Aquifer System Broome and Tioga County Areas, NY; Sole Source Aquifer; Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Clinton Street-Ballpark Valley Aquifer System, underlying the Broome and Tioga County areas is the sole or principal source of drinking water for Vestal, Johnson City, Endicott, Nichols, Waverly and Owego, New York, and that the aquifer, if contaminated would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the Broome and Tioga County areas and their streamflow source zone (upstream portions of the Susquehanna River drainage basin) will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on January 28, 1985. This determination shall become effective on February 27, 1985.

ADDRESS: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Water Supply Branch, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Damian J. Duda, Drinking/Ground Water Protection Branch, 26 Federal Plaza, New York, New York 10278, (212) 264-1800.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 1424(e) of the Safe Drinking Water Act states:

(e) If the Administrator determines, on his own initiative or petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the *Federal Register*. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On February 26, 1981, the Purity of Water ad hoc Committee petitioned the EPA to designate the Clinton Street-Ballpark Aquifer and Extension as a sole source aquifer. A final revised petition was submitted on June 21, 1981. On April 26, 1983, EPA published a notice in the *Federal Register* announcing a public comment period and setting a public hearing date. A public hearing was conducted on May 26, 1983, and the public was allowed to submit comments on the petition until June 27, 1983.

II. Basis For Determination

Among the Factors to be considered by the Administrator in connection with the designation of a Sole Source Aquifer under Section 1424(e) are: (1)

Whether the aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of information available to this Agency, the Administrator has made the following findings, which are the basis for the determination noted above:

1. The Clinton Street-Ballpark Valley Aquifer System of the Broome and Tioga County areas is the "sole source" of drinking water for approximately 127,555 residents of Vestal, Johnson City, Endicott, Nichols, Waverly and Owego, New York.

2. There is no feasible existing alternative drinking water source or combination of sources which provides fifty percent or more of the drinking water to the designated area.

3. The aquifer is overlain by permeable unconsolidated glacial and recent deposits. As a result of the

permeable soil characteristics, the Clinton Street-Ballpark Valley Aquifer System of the Broome and Tioga County areas is highly susceptible to contamination through its recharge zone from a number of sources including, but not limited to, chemical spills, leachate from landfills, stormwater runoff, highway deicers, faulty septic systems, wastewater treatment systems, and waste disposal lagoons. The aquifer is also susceptible to contamination to a lesser degree from the same sources, through its steamflow source zone. Since ground water contamination can be difficult or impossible to reverse and since the aquifer in this area is solely relied upon for drinking water purposes by the population of the Broome and Tioga County areas, contamination of the aquifer could pose a significant hazard to public health.

III. Description of the Clinton Street-Ballpark Valley Aquifer System of the Broome and Tioga County Areas, Their Recharge Zone and Their Streamflow Source Zone

The Clinton Street-Ballpark Valley Aquifer System is composed of permeable glacial sediments covering bedrock valleys. The system, located in central New York, is fairly large, extending from the Pennsylvania border through both Broome and Tioga Counties. The area in which Federal financially assisted projects will be subject to review is the portion of the Clinton Street-Ballpark Valley Aquifer System in the Broome and Tioga County areas, the recharge zone and the streamflow source zone.

For purposes of this designation, the Clinton Street-Ballpark Valley Aquifer System is considered to include the entire municipalities of Vestal, Johnson City, Endicott, Nichols, Waverly and Owego, New York. Its recharge zone is considered to be one and the same with this area. The streamflow source zone is that portion of the Susquehanna River drainage basin composing the upstream headwaters area for the Broome and Tioga County area.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications.

The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Drinking/Ground Water Protection Branch, 26 Federal Plaza, New York, New York 10278.

V. Project Review

EPA Region II is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures have been developed through which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Clinton Street-Ballpark Valley Aquifer System, upon which the Broome and Tioga County areas are dependent for their sole source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be entered into. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on any existing or future State and local control mechanisms in protecting the ground water quality of the Clinton Street-Ballpark Valley Aquifer System, upon which the Broome and Tioga County areas are dependent for their sole source water supply. Included in the review of any Federal financially assisted project will be coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

All comments at the public hearing were unanimously in favor of designation. Two commentors expressed the need to extend the area of consideration through Tioga County.

Most of the written comments submitted were in favor of designation. Only one commentor expressed the feeling that designation would not meet the community objective of abundant, safe drinking water. He also felt that additional reviews would only lead to duplication of review efforts, negative impact on agency and department budgets and little direct impact on the privately funded work that makes up the

majority of capital projects in the community.

Four of the written comments expressed the need to extend the area of consideration through Tioga County to the Pennsylvania border.

The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the residents of Broome and Tioga Counties.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification the "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to the Broome and Tioga County areas.

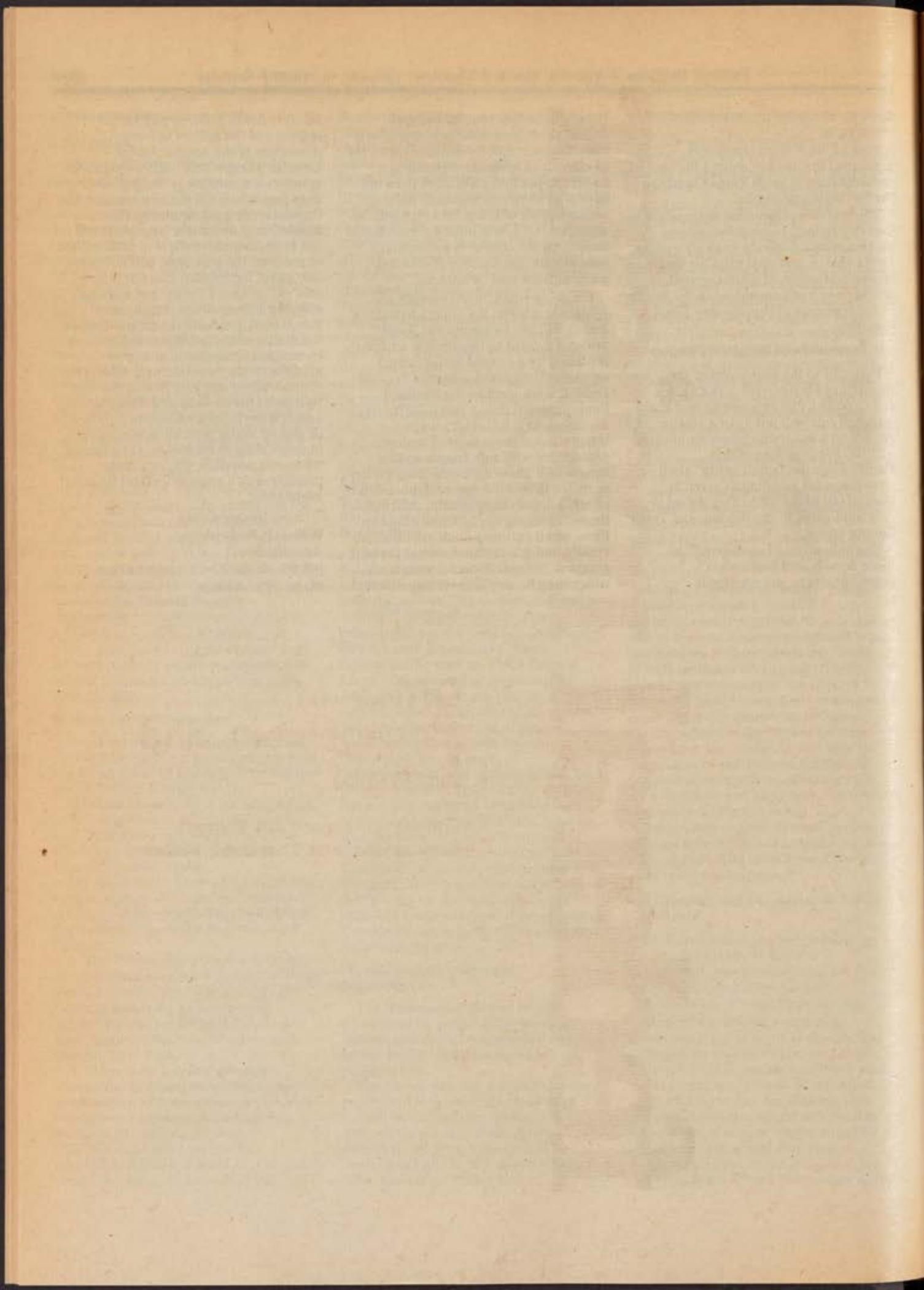
The only affected entities will be those Area-based businesses, organizations or governmental

jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected

small entity in order to pay for the redesign of the project to assure protection of the aquifer. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of \$100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Clinton Street-Ballpark Valley Aquifer System of the Broome and Tioga County areas. It provides an additional review of ground water protection measures; incorporating State and local measures whenever possible, for only those projects which request Federal financial assistance.

Dated: January 4, 1985.
William D. Ruckelshaus,
Administrator.
[FR Doc. 85-989 Filed 1-11-85; 8:45 am]
BILLING CODE 6560-50-M



federal register

Monday
January 14, 1985

Part V

Office of Management and Budget

Cumulative Report on Budget
Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET**Cumulative Report on Rescissions and Deferrals**

January 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of January 1, 1985, of 37 deferrals

contained in the first three special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984.

Rescissions (Table A and Attachment A)

As of January 1, 1985, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of January 1, 1985, \$9,170.3 million in 1985 budget authority was being deferred from obligation and \$6.3 million in 1985 outlays was being deferred from expenditure. Attachment B shows the

history and status of each deferral reported during FY 1985.

Information From Special Messages

The Special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Register listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984

Vol. 49, FR p. 44870, Friday, November 9, 1984

Vol. 49, FR p. 47804, Thursday, December 6, 1984

David A. Stockman,
Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	\$ 0
Accepted by the Congress.....	0
Rejected by the Congress.....	<u>0</u>
Pending before the Congress.....	\$ 0

TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	\$ 12,207.8
Routine Executive releases through January 1, 1985 (OMB/ Agency Releases of \$3,031.3 million and cumulative adjustments of \$0.1 million).....	-3,031.1
Overtaken by the Congress.....	<u>0</u>
Currently before the Congress.....	\$ 9,176.6 ^{a/}

^{a/} This amount includes \$6.3 million in outlays for a Department of the Treasury deferral (D85-13).

Attachment A - Status of Rescissions - Fiscal Year 1985

As of January 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
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NONE

Attachment B - Status of Deferrals - Fiscal Year 1985

As of January 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 1-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	-413000				4,526,500
Economic support fund.....	D85-2 D85-2A	280,500	3,826,000	10-1-84 11-29-84	-2161285				1,945,215
Military assistance.....	D85-3 D85-3A	18,500	782,770	10-1-84 11-29-84	-83400				717,870
International military education and training.....	D85-25	55,521		11-29-84	-55521				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					9,704
Expenses, brush disposal.....	D85-5	55,850		10-1-84					55,850
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6 D85-6A	300,008	906,322	10-1-84 11-29-84	-132914				1,073,416
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84					230,790
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84	-150			135	1,112

Attachment B - Status of Deferrals - Fiscal Year 1985

As of January 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 1-1-85
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy research and development.....	D85-27	4,871		11-29-84					4,871
Fossil energy construction.....	D85-28	2,165		11-29-84					2,165
Naval petroleum and oil shale reserves.....	D85-29	23		11-29-84					23
Energy conservation.....	D85-30	3,398		11-29-84					3,398
Strategic petroleum reserve.....	D85-31	401		11-29-84					401
Energy security reserve and alternative production.....	D85-32	852		11-29-84					852
Power Marketing Administrations									
Southeastern Power Administration, Operation and maintenance.....	D85-16	12,467		10-31-84					12,467
Southwestern Power Administration, Operation and maintenance.....	D85-17	7,260		10-31-84					7,260
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D85-18	3,000		10-31-84					3,000
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D85-8	424		10-1-84					424
Social Security Administration Limitation on administrative expenses (construction).....	D85-9	15,488		10-1-84					15,488
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d).....	D85-10	49		10-1-84					49
Bureau of Indian Affairs Construction.....	D85-33	8,918		11-29-84	-893				8,025
DEPARTMENT OF JUSTICE									
Federal Prison System Buildings and facilities.....	D85-19	44,534		10-31-84					44,534
DEPARTMENT OF LABOR									
Employment and Training Administration State unemployment insurance and employment service operations.....	D85-34	3,767		11-29-84					3,767
Bureau of Labor Statistics Salaries and expenses.....	D85-35	5,000		11-29-84					5,000
DEPARTMENT OF STATE									
Other United States emergency refugee and migration assistance fund.....	D85-20	32,928		10-31-84					32,928
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (airport and airway trust).....	D85-11	537,205		10-1-84	-163000				374,205

Attachment B - Status of Deferrals - Fiscal Year 1985

As of January 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 1-1-85
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund.....	085-12	55,400		10-1-84	-2557				52,843
	085-13	19,900		10-1-84	-13561				6,339
GENERAL SERVICES ADMINISTRATION									
National Archives and Records Service									
Operating expenses.....	085-36	4,700		11-29-84					4,700
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting									
Grants and expenses.....	085-21	4,408		10-1-84					4,408
Panama Canal Commission									
Operating expenses.....	085-37	6,346		11-29-84					6,346
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund.....	085-14	14,300		10-1-84	-5000				9,300
Railroad Retirement Board									
Milwaukee railroad restructuring, administration.....	085-15	108		10-1-84					108
U. S. Information Agency									
Salaries and expenses.....	085-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program.....	085-23	852		10-31-84					852
TOTAL, DEFERRALS.....		6,692,696	5,515,092		-3,031,281	0		135	9,176,642

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (085-13) of outlays only.

[FR Doc. 85-1123 Filed 1-11-85; 8:45 am]

BILLING CODE 3110-01-C

federal register

Monday
January 14, 1985

Part VI

Federal Communications Commission

47 CFR Part 69

**Interim Party Line Charges; Order
Extending Time for Filing Comments and
Reply Comments; MTS and WATS Market
Structure; Notice of Proposed
Rulemaking**

NOV 25 1988

Part VI

Federal
Communications
Commission

47 CFR Part 63

Interim Policy and Charges Order
Scheduling Time for Party Comments and
Reply Comments; MTS and WATS Market
Structure Rules of Proposed
Revising

Revised Report

FEDERAL COMMUNICATIONS
COMMISSION

47 CFR Part 69

CC Docket No. 78-72, Phase I]

Interim Party Line Charges; Order
Extending Time for Filing Comments
and Reply Comments; MTS and WATS
Market StructureAGENCY: Federal Communications
Commission.ACTION: Notice of proposed rulemaking;
extension of comment/reply comment
period.

SUMMARY: In response to a Motion for Extension of Time that was filed by the United States Department of Justice, the comment filing period for the interim party-line charges and the local transport waiver issues was extended from January 14, 1985, to January 22, 1985. The period for filing reply comments was extended from January 24, 1985 to January 28, 1985.

DATES: Comments on the interim party-line charges and the local transport waiver issues are now due by January 22, 1985, and reply comments are due by January 28, 1985.

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

FOR FURTHER INFORMATION CONTACT:

Kent R. Nilsson, Federal
Communications Commission, (202) 632-
6363.

SUPPLEMENTARY INFORMATION:

Order Extending Time

In the matter of MTS and WATS Market
Structure, CC Docket No. 78-72; Phase I (12-
28-84; 49 FR 50413).

Adopted: January 11, 1985.

Released: January 11, 1985.

1. On December 28, 1984, the Commission released a Notice of Proposed Rulemaking in CC Docket No. 78-72, Phase I (FCC 84-604), that requested comments upon four sets of issues. Two of those sets of issues (interim party-line charges and the local transport waiver issues) were subject to comment and reply comment filing deadlines of January 14, 1985, and January 24, 1985, respectively.¹

2. On January 10, 1985, the Antitrust Division of the United States Department of Justice (hereinafter, the "Department") filed a motion that sought to extend the comment filing deadlines from January 14, 1985, to January 21, 1985, and from January 24, 1985 to January 28, 1985. In support of its motion, the Department stated "[w]e have been meeting with representatives of the exchange carriers and the long

distance companies to obtain certain facts which we believe are relevant to the issues presented by this rulemaking as well as issues concerning compliance with the MFJ. Unfortunately this process can not be accomplished within the relatively short time period specified in the Commission's notice."

3. We believe that the Commission should have the benefit of the Department's comments, and that the additional time that has been requested by the Department is not unreasonable. The Commission's Offices will, however, be closed during Inauguration Day, January 21. As a consequence, in granting the Department's motion, we will extend the period for the filing of initial comments to January 22, 1985.

4. Accordingly, it is ordered That comments upon the interim party-line charges and local transport waiver issues may be filed on or before January 22, 1985, and reply comments may be filed on or before January 28, 1985.

5. This order is issued pursuant to §0.91 and 0.291 of the Rules of the Federal Communications Commission, 47 CFR 0.91, 0.291 (1984).

Federal Communications Commission.

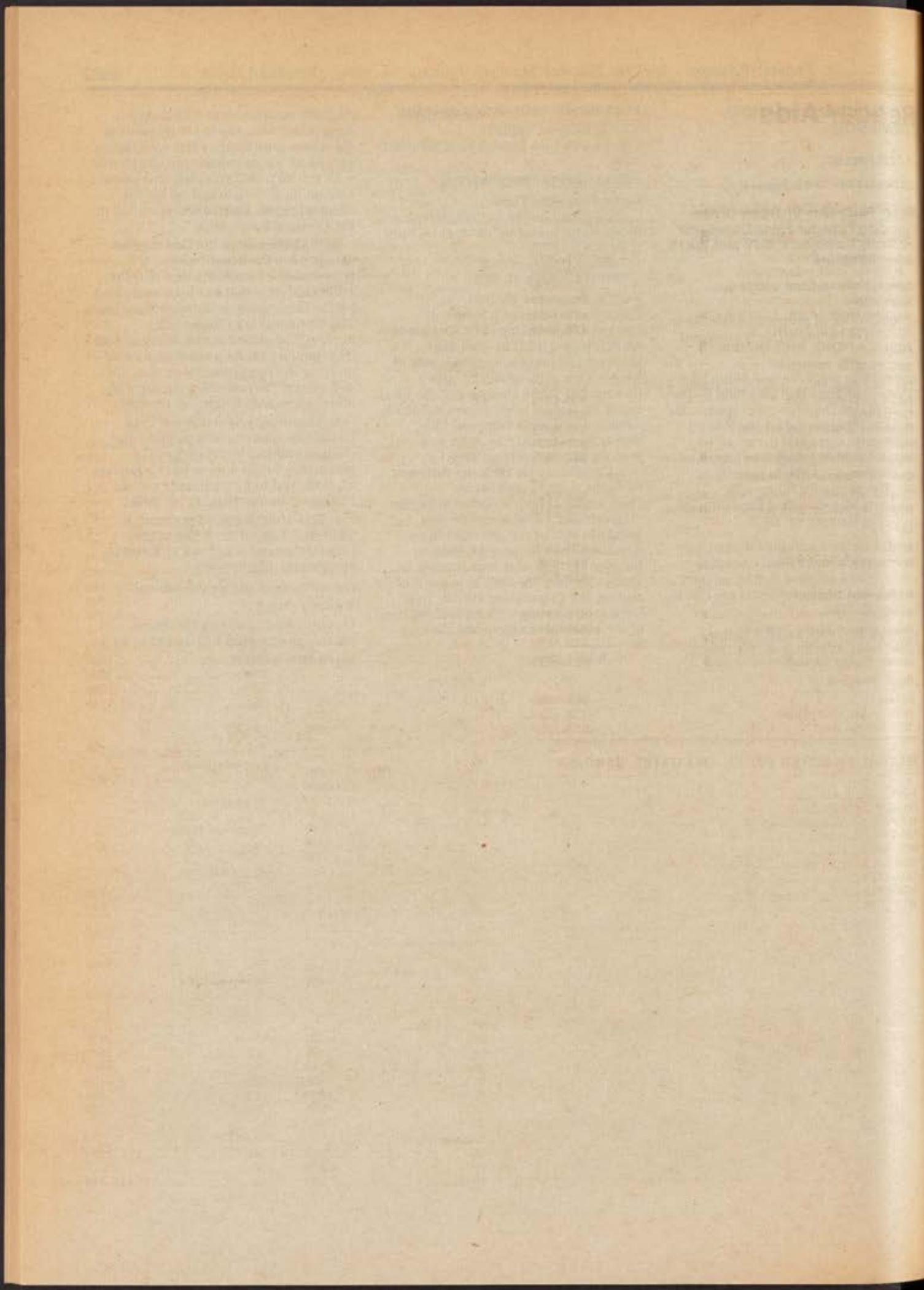
William F. Adler,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 85-1220 Filed 1-11-85; 12:01 pm]

BILLING CODE 6712-01-M

¹ 49 FR 50417 (1984).



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Federal Register

Vol. 50, No. 9

Monday, January 14, 1985

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S.J. Res. 6 / Pub. L. 99-1

Extending the time within which the President may transmit the Budget Message and the Economic Report to the Congress and extending the time within which the Joint Economic Committee shall file its report. (Jan. 9, 1985; 99 Stat. 3) Price: \$1.00

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4	12.00	Jan. 1, 1984
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1-1199	13.00	Jan. 1, 1984
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500-End	13.00	Jan. 1, 1984
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