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Thursday
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Social Security Administration

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Food and Drug Administration

Aviation Safety
Federal Aviation Administration

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Comptroller of Currency

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Sweetpotatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the voluntary United States Standards for Grades of Canned Sweetpotatoes. This final rule was developed by the U.S. Department of Agriculture (USDA) at the request of the canned sweetpotato industry. This rule revises the voluntary grade standards to: (1) Determine uniformity of size by basing this factor on the 95 percent, by count, most uniform units, disregarding five percent or one unit, whichever is greater, instead of using 90 percent most uniform units; and (2) incorporate minor editorial changes in § 52.2052 "Factors of quality" and in Tables III and IV of § 52.2053, "Requirements for grades". The effect of this final rule will be to improve the grade standards and promote orderly and efficient marketing.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Harold A Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6247.

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

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, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

On September 16, 1983, a final rule was published in the **Federal Register** (48 FR 41571), effective October 17, 1983, which revised U.S. Standards for Grades of Canned Sweetpotatoes. The revision based determination of uniformity of size on the 90 percent most uniform units, removed the factor of "shape" as a quality criterion, established "whole and pieces" as a designated style, included pathological or insect injury as part of the definition of blemishes, provided a uniform format, consolidated allowances listing various quality factors into two tables, and incorporated minor editorial changes.

Between October 1983 and January 1984, some segments of industry indicated a desire to change the criterion for determination of uniformity of size. Consequently, a meeting was held on February 12, 1984, in Washington, D.C. between major segments of the canned sweetpotato industry and USDA Fruit and Vegetable Division officials which was chaired by the National Food Processors Association. The purpose of the meeting was to allow various segments to discuss U.S. grade standards. Representatives of several sweetpotato processors as well as representatives from the Louisiana Sweet Potato Commission and the North Carolina Yam Commission were present. The majority of industry indicated that basing determination of uniformity of size on 90 percent most uniform units was not acceptable and notified USDA officials that they would submit petitions requesting revision of the U.S. grade standards.

From April 1984 through July 1984, the USDA received seven requests to reconsider the U.S. grade standards. Three of the requests were in the form of petitions, each of which suggested different numerical percentages for the determination of uniformity of size. The North Carolina Yam Commission [which indicated it represents three sweetpotato processing plants, 40,000 acres of sweetpotatoes, and 40 percent of the total U.S. production] petitioned for basing unformity of size on the 98 percent most uniform units. The Louisiana Sweet Potato Commission [which indicated that it represents five sweetpotato processing plants, 28,000 acres of sweetpotatoes, and about 28 percent of the total U.S. production] petitioned that determination be based on the 97 percent most uniform units. Case Swayne Company, Incorporated, Santa Ana, California, the third petitioner, requested that no less than seven percent be set aside when determining uniformity of size (or the 93 percent most uniform units).

On August 17, 1984, a proposed rule was published in the **Federal Register** (49 FR 32855) to revise the criterion for determining uniformity of size by basing this factor on the 95 percent most-uniform units (§ 52.2045). This was a solution which sought to equitably address the various concerns of the entire industry. Comments were to be filed through the Hearing Clerk until September 17, 1984.

Comments were received within the prescribed time from the Louisiana Sweet Potato Commission and KMC Foods, Incorporated, Cheriton, Virginia.

The Louisiana Sweet Potato Commission supported the proposed revision. The Commission represents processors who indicate they produce a sizeable portion of the national pack (approximately one-half the total amount of sweetpotatoes canned in the United States).

KMC Foods, Incorporated, opposed the proposed rule on the basis that current U.S. grade standards for canned sweetpotatoes have been in effect less than one year. They did not see a compelling or urgent need for USDA to make another change after such a short period of time, and suggested that the current standards should have an opportunity to be further evaluated.

Although current U.S. grade standards for canned sweetpotatoes have been in effect for a relatively brief period, significant objections were made soon after issuance. Major segments of the canned sweetpotato industry indicated

a desire to change the numerical percentage for determining uniformity of size, and have pursued their concern with formal petitions.

A late comment was received from the California League of Food Processors (CLFP), which contended that the grade standards in effect were valid; i.e., determination of uniformity of size should be based upon 90 percent most uniform units. They further contended that the proposed rule attempted to invalidate current standards because it did not significantly address the issue of eliminating bias among different can sizes.

The USDA does not agree that changing the criterion for uniformity of size from a 90 percent to a 95 percent basis would invalidate the objective of eliminating bias between container sizes. Such bias was eliminated when the standards were revised in September 1983, to adopt a percentage basis for determining uniformity rather than a weight comparison basis as incorporated in previous standards. The consideration now relates to the degree of most uniform units. While the current 90 percent most uniform units criterion has a few advocates, the consensus of the industry expertise is that a stricter standard is necessary. The 95 percent level adopted herein will adequately serve all segments of the industry.

A minor editorial changed is necessary in this final rule that would list "Flavor and Odor" in § 52.2052 "Factors of quality" and in Table III and Table IV of § 52.2053, "Requirements for grades". This unscored prerequisite quality factor is defined under § 52.2045, "Definitions of terms", and was inadvertently omitted from these sections during the last revision. This is not a substantive change from the requirements which have been in effect for many years.

After review of comments received and other information and in order to promote orderly marketing of canned sweetpotatoes, USDA hereby revises the grade standards for canned sweetpotatoes to:

(1) Determine uniformity of size based on the 95 percent, by count, most uniform units, disregarding five (5) percent or one (1) unit, whichever is greater; and

(2) Incorporate minor editorial changes.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

PART 52—[AMENDED]

Accordingly, the Subpart—United States Standards for Grades of Canned Sweetpotatoes (7 CFR 52.2041–52.2060) is revised as follows:

1. In § 52.2045, paragraphs (s) (1) and (2) are revised to read as follows:

§ 52.2045 Definitions of terms.

* * * * *

(s) *Uniformity of Size*—(1) *Practically uniform in size* means, of the 95 percent (by count) most uniform units [disregarding five (5) percent or one (1) unit, whichever is greater], the largest unit does not exceed the weight of the smallest unit by more than a ratio of 3 to 1.

(2) *Reasonably uniform in size* means, of the 95 percent (by count) most uniform units [Disregarding five (5) percent or one (1) unit, whichever is greater], the largest unit does not exceed the weight of the smallest unit by more than a ratio of 4 to 1.

2. In § 52.2052, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 52.2052 Factors of quality.

* * * * *

(e) Character;
(f) Flavor and Odor.

§ 52.2053 [Amended]

3. In § 52.2053, the top portion of Table III is amended by adding, immediately after and directly below the last line entitled "Score" and immediately prior to the section where "Max per sample unit, Max sample average, etc." begins, the following line:

* * * * *

Flavor and Odor.	Good [4]	Reasonably good [1]

4. in § 52.2053, the following footnote is added at the end of Table III:

* * * * *

[4] Cannot be graded U.S. Grade A, regardless of total score, unless there is good flavor and odor.

5. In § 52.2053, Table IV is amended by adding, immediately after the lines entitled "Character" and "Score", the following line:

* * * * *

Flavor and Odor.	Good [2]	Reasonably good [1]

* * * * *

6. In § 52.2053, the following footnote is added at the end of Table IV:

* * * * *

[2] Cannot be graded U.S. Grade A, regardless of total score, unless there is good flavor and odor.

(Agricultural Marketing Act of 1946, Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C. on March 8, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–6132 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–02–M

Federal Crop Insurance Corporation

7 CFR Part 402

[Amdt. No. 3; Doc. No. 2045S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 crop year only, by changing the date for filing contract changes specified in the policies for insuring such crop. The intended effect of this rule is to provide additional time in which to file changes made in the policy for insuring raisins. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective Date:* March 14, 1985.

Comment Date: Written comments, data, and opinions on this interim rule must be submitted not later than May 13, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

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. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. 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 on 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 interim 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 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.

Section 17 of the policy for insuring raisins provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to a delay in processing a revision and reissuance of the regulations for insuring raisins, it is necessary to extend the date for filing such changes to the contract an additional 15 days in order to conform to the date for filing changes. It has been determined that the date is extended to May 15, 1985, effective for the 1985 crop year only.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Program changes necessary to maintain the actuarial integrity of the raisin crop insurance program require a number of changes in the crop insurance policy. Without these changes, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these changes will not permit filing in the counties by the present contract date of April 30. There is not sufficient time to provide for public comment and implement these changes prior to April 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from April 30, 1985, until May 15, 1985, and made effective for the 1985 crop year only. All policyholders should be aware of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Interim 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 amends the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 crop year only, in the following instances:

1. The Authority Citation for 7 CFR Part 402 is:

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

§ 402.7 [Amended]

2. 7 CFR 402.7(d)17 is revised to read as follows:

* * * * *

(d) * * *

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17. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you will be deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by May 15, preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on February 15, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 8, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–6090 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 433

[Doc. No. 1905S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby Revises and reissues the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1986 and succeeding crop years to provide for: (1) Removing the Premium Adjustment Table; (2) Adding as a cause of loss the unadvoidable failure or irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the method of crediting the replanting payments; 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: December 1, 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. 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 on 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 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 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.

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

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

2. *Section 2.g.*—Add a new subsection concerning acreage cultivation and insurability to be consistent with other policies containing similar provisions.

3. *Section 5.a.*—Remove the Premium Adjustment Table. 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. Since those insureds with good loss ratios and premium reduction stayed in the program while those with premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

4. *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.

5. *Section 6*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. This is a change from the premium practice of applying the replanting payment to the outstanding premium in all cases.

6. *Section 9.e.*—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.

7. *Section 9. c. and g.*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

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. The FCIC service offices will be able to advise a producer if dry bean insurance is offered in any county.

On Friday, December 14, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 48733, to revise and reissue the Dry Bean Crop Insurance Regulations for the 1985 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. However, time constraints do not allow for publication is time for the 1985 crop year. Therefore, with the exception of minor corrections to language and format, the proposed rule as published in hereby adopted as a final rule, effective for the 1986 and succeeding crop years.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry bean.

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 Dry Bean Crop Insurance Regulations (7 CFR Part 433), and removes Appendix A, effective for the 1986 and succeeding crop years, to read as follows:

PART 433—DRY BEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

433.1 Availability of dry bean crop insurance.
433.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
433.3 OMB control numbers.
433.4 Creditors.
433.5 Good faith reliance on misrepresentation.
433.6 The contract.
433.7 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 1986 and Succeeding Crop Years

§ 433.1 Availability of dry bean crop insurance.

Insurance shall be offered under the provisions of this subpart on dry beans 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.

§ 433.2 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 dry beans 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.

§ 433.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 433) 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.

§ 433.4 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.

§ 433.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the dry bean insurance contract, whenever: (a) An insured 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 is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured 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 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 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.

§ 433.6 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 dry bean 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 service offices.

§ 433.7 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 dry bean 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 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a dry bean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D or 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 Dry Bean Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Dry Bean—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 9f(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 bean 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 dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; or

(2) Bush varieties of garden seed beans, planted for harvest as seed and grown under a contract with a seed company executed before the acreage reporting date;

which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

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

c. The acreage insured for each crop year will be beans 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.

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

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;

(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 for 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 beans, and such acreage was not replanted;

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

(6) Of volunteer beans;

(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;

(8) Which does not meet the rotation requirements designated by the actuarial table; or

(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice:

(1) You will report as irrigated only the acreage for which you have adequate

facilities and water to carry out a good bean irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good bean 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.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation but, if insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage and not as acreage put to another use.

h. Any acreage of beans which is destroyed and replanted to an insurable class of dry edible beans or bush varieties of garden seed beans will be regarded as insured acreage and not as acreage put to another use.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. 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 beans in the county in which you have a share;

b. The practice;

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 beans 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 will be contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect 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 1984 crop year under the terms of the Experience Table contained in the dry bean policy for the 1985 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 1985 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 a replanting payment if the billing date has passed on the date you are paid the replanting payment, 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 beans are planted and ends at the earliest of:

a. Total destruction of the beans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

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

(d) 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 beans 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 replanted or 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 beans (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) 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 beans on the unit;

(b) Harvest of the unit; or

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

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. 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 beans 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 beans 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 of dry edible beans by:

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

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

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

(4) Multiplying this result by your share.

d. The amount of indemnity for any unit of bush varieties of garden seed beans will be determined by substracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed. The applicable price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obtained by multiplying, by variety, the production guarantee per acre by the insured acreage, by the price per pound at which indemnities will be computed. The price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual 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.

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

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent; or

(b) Which is threshed and of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, do not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table or would not meet these requirements if properly handled or, if a conversion factor is not designated by the actuarial table, any threshed beans which do not grade No. 2 or better in accordance with the Official United States Grain Standards will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium white, the price shall be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of the day the loss is adjusted or the day such beans were sold.

(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 bean 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; and

(c) Any appraised production on 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 beans 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 beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) When you have elected to exclude hail and fire as insured causes of loss and the beans are 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.

g. A replanting payment may be made on any insured beans replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed the product obtained by multiplying 100 pounds times the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. 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.

j. We have a policy for paying your indemnity within 30 days of our approval of our claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will pay simple interest, however, computed on the net indemnity ultimately found to be due to you by us or by a final judgment from and including the 61st day after the date the insured signs, dates and submits to use the properly completed claim for indemnity form, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the idemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act (41 U.S.C. 611) and published in the **Federal Register**. This rate is published semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with the 1985 crop year.

k. 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 beans are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, and 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 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 beans 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. Live 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 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 payment and set-off are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31
All other states	April 15

e. 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.

f. 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 office by December 31 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 dry bean 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 dry bean 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 beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

d. "Harvest" means the completion of combining or threshing of beans on the unit.

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. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

k. "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.

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

m. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 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 beans on such land shall 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 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 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 affect the construction or meaning of any 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 15, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: March 8, 1985.

[FR Doc. 85-6091 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 979

Melons Grown in South Texas; Amendment No. 4 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule further amends continuing regulation § 979.304 to permit the regular shipment of honeydew melons in bulk containers of specified sizes. It allows shippers to better serve their customers by providing a container desired by many retailers and thus enhance orderly marketing. Without the change the competitive position of production area shippers could be eroded.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-5764.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given in the January 28, 1985, **Federal Register** (50 FR 3797) affording interested persons until February 27, 1985, to submit written comments. None was received.

Marketing Agreement No. 156 and Order No. 979 regulate the handling of melons grown in designated counties in South Texas. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Melon Committee, established under the order,

is responsible for its local administration.

Because requirements under this program have changed infrequently, in December 1981 the committee recommended, and the Secretary approved, a regulation which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

At its public organizational meeting at McAllen, Texas, on November 14, 1984, the committee recommended that the handling regulation continue but that provision be made under paragraph (c) *Containers* for permitting the shipment of honeydew melons in bulk bins of specified sizes. For several seasons the use of such bulk containers has been permitted under the provisions of special purpose shipments. The bulk bin used is one which can be used in the retail establishment as a bulk display for melons. The committee believes that using the bin as both a shipping container and a retail display tends to increase the efficiency of honeydew melon marketing.

Although the regulation is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Fruit and Vegetable Division before March 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension or termination of the regulations on shipments of South Texas melons would tend to effectuate the declared policy of the act.

Findings

After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that the following amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons, Texas.

PART 979—MELONS GROWN IN SOUTH TEXAS

Section 979.304 (47 FR 13118, 47 FR 24109, 48 FR 21881 and 15541) is hereby further amended by redesignating paragraph (b)(4) as (b)(5) and adding a new (b)(4), by revising (e)(3), and by removing paragraph (f)(5) as follows:

§ 979.304 Handling regulation.

* * * * *

(b) *Container-requirements.* * * *

(4) Honeydew melons may be packed in bulk containers of 48 inches long by 40 inches wide by 24 inches deep or similar dimensions.

* * * * *

(e) * * *

(3) Upon approval of the committee, shipments of honeydew melons may be made in pony cartons having dimensions of 17 inches long by 14½ inches wide by 5⅝ inches deep. Container requirements of paragraph (b) of this section shall not apply, but such shipments shall meet all other applicable requirements of this section.

* * * * *

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

Dated: March 8, 1985, to become effective May 1, 1985.

Thomas R. Clark,

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

[FR Doc. 85–6130 Filed 3–13–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 3 and 7

[Docket No. 84–29]

Minimum Capital Ratios; Issuance of Directives

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency is adopting a final regulation and interpretive ruling on capital requirements for national banks. This regulation and interpretive rule implement section 908 of the International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153) codified at 12 U.S.C. 3907, which directs the Comptroller of the Currency to establish minimum levels of capital for national banks and to require them to achieve and maintain adequate capital. The Office also is required to analyze capital adequacy in taking action on various types of applications such as mergers and branches and in conducting the Office's supervisory activities related to the safety and soundness of individual banks and the banking system. A proposed regulation was published for comment on September 4, 1984 (49 FR 34838) and several changes have been made in response to the comments. The final regulation: (a) Defines capital; (b) establishes required minimum capital ratios; (c) establishes procedures to set higher required minimum capital ratios for an individual bank; and (d) establishes procedures for issuing a directive to require a national bank to achieve and maintain the minimum capital ratios applicable to it.

DATE: This regulation is effective April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Susan K. Fetner, National Bank Examiner, or John H. Noonan, Director, Commercial Examinations Division (202 447–1164), or Dorothy A. Sable, Senior Attorney (202 447–1880).

SUPPLEMENTARY INFORMATION: The final regulation generally is similar to the regulation proposed for comment with respect to required capital ratios and procedures for establishing higher required ratios for individual banks and for issuing directives. The major changes contained in the final regulation are: (1) The treatment of intangible assets (mortgage servicing rights are included in primary capital in their entirety, while all other intangible assets are deducted from capital); (2) grandfathering the treatment of all funding instruments and intangible assets previously allowed as capital by the Office; and (3) retaining the 50% limit on secondary capital contained in the former 12 CFR 7.1100, while discontinuing required amortization of subordinated debt. These changes and others are discussed in the relevant sections of the preamble which follow.

Background

The Office of the Comptroller of the Currency (Office) has always had a strong concern for the maintenance of adequate capital in individual banks and in the banking system. The protection of depositors and fostering of stability in the financial system are critical to the mission of the Office and capital adequacy plays a key role in the policies and programs used in performing the Office's supervisory functions. A determination of capital adequacy is one of the major objectives of a bank examination and is one of the five components which form the basis of

the Uniform Financial Institutions Rating System used by the Office in determining the condition of individual banking institutions.

Additionally, by enacting the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) (ILSA) Congress has explicitly recognized the importance capital adequacy assumes in the safe and sound operation of the nation's banking system.

Several factors have emerged over the past few years which are accentuating the potential demands on bank capital. The decrease in banks' net interest margins, together with a weakening of loan portfolios brought about by shocks in the domestic and world economy have caused a decline in bank profitability and increased levels of risk within the system. The competition for financial services has intensified on both an intraindustry and interindustry basis, placing additional pressures on bank profitability. Further, because of the growing interdependency within the system, problems in one institution can have repercussions on other institutions, arguing for stronger capital levels in both individual banks and the system as a whole. Increasing levels of off-balance sheet risks are also a factor in the need for higher capital.

Section 908 of ILSA (12 U.S.C. 3907) directs the federal banking agencies to ". . . cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." Therefore, pursuant to the Office's authority under ILSA and the authority contained in the National Banking Act, the Office proposed a regulation on capital requirements.

The Federal Reserve Board ("FRB") and the Federal Deposit Insurance Corporation ("FDIC") also issued similar capital proposals for comment. The Office's regulation was published for comment on September 4, 1984, and 85 comments were received; the majority from national banks and their representatives. The comments covered a wide range of issues. The Office has carefully reviewed all of the comments and has adopted a number of recommendations in the final regulation. An explanation of the changes to the proposed regulation and a discussion of the comments are contained in subsequent sections of this preamble.

Generally, the final regulation is intended to foster further improvement in bank capital ratios and eliminate the disparities in treatment of federally regulated banks with respect to capital adequacy. The regulation also sets forth the procedures, pursuant to the authority contained in ILSA, for issuing directives to require banks to achieve and maintain adequate capital.

This regulation will supplement, rather than replace, the Office's supervisory evaluations of capital adequacy. The process of determining the adequacy of bank's capital on an ongoing basis begins with a qualitative evaluation of the critical variables that directly bear on the institution's overall financial condition. These variables include the quality, present value, type and diversification of assets; historical and prospective earnings; liquidity (with emphasis on asset/liability management); the quality of management; and the existence of other activities that may expose the bank to risks, including off-balance sheet items, the degree of leverage, and risks undertaken by the parent company or other affiliates and institutions with which the bank has significant financial relationships, including chain banking organizations. Banks with significant weaknesses in one or more of these areas will be expected to maintain higher capital levels than the minimums set forth in the regulation. In addition, the Office stresses that the capital requirements set forth in this regulation are minimums and all banks are encouraged to maintain higher levels of capital in order to provide protection against unforeseen adversities.

General Issues

The regulation applies to national banks and banks located in the District of Columbia. It does not apply to bank holding companies; however, when considering the condition of or an application from banks which are subsidiaries of holding companies, the activities and condition (including capital adequacy) of the holding company will be taken into account by the Office. The minimum capital ratio requirements set forth in the regulation do not apply to federal branches and agencies; however, the Office is studying what change in the capital equivalency deposit requirement for federal branches and agencies would be necessary to make this requirement comparable to the capital ratios required for domestic banks. The procedural portions of the regulation (Subparts C, D, and E, §§ 3.9—3.21) will be made applicable to federal branches and agencies through amendment of 12 CFR Part 28. (See discussion of Issues for Comment, No. 10.)

Like the proposal, the final regulation sets the minimum acceptable ratio of total capital to adjusted total assets at six (6) percent (%) and the minimum ratio of primary capital to adjusted total assets at five and one-half (5½) percent (%). These ratios would apply to well-managed banks of all sizes which have no material weaknesses. Based on the September 30, 1984 Call Reports, approximately 95% of all national banks had a primary capital ratio in excess of 6%, a level which would exceed the primary capital requirement established by this regulation. In addition, most of the larger multinational and regional banks (which generally have lower capital ratios than smaller banks) had primary and total capital ratios which would exceed the minimum requirements.

Fifty-five comments concerned the regulation and/or the ratios generally. The first major topic of these comments was the issue of whether the ratios should be contained in guidelines as proposed by the Federal Reserve Board, rather than in a regulation as proposed by both the Office and the FDIC. The Federal Reserve Board approach was overwhelmingly favored by those commenting on this issue because of its flexibility. Several commentors pointed out the need to retain flexibility as new forms of capital are developed. Only one respondent favored a regulation. Four of the commentors urged that capital requirements be imposed on a bank-by-bank basis.

While guidelines would provide greater flexibility, the Office has determined that capital is of such importance that minimum capital ratios should be a legal requirement and not merely an exhortation set out in guidelines. A regulatory requirement also provides some protection to the industry since it insures that the Office will not change the minimums without public notice and an opportunity for comment. The regulation contains several provisions which preserve flexibility in the case of individual banks with respect to new capital instruments that may be developed in the future.

The commentors overwhelmingly urged that there be uniform rules among the three agencies. However, two commentors argued that uniformity should not prevail over more sensible rules adopted by an individual agency. The agencies have attempted to adopt uniform rules and, with the exception of procedural requirements, the Office's final rule generally will be similar to that of the FDIC.

There was considerable support for the new minimums. However, there was also opposition to the overall emphasis on capital as well as to the new requirements. Several commentors

argued that the higher minimum requirements are not needed since 95% of banks already meet these requirements. They believe that it is more important to address banks' overall strength. One commentor believed that the requirements were ill-advised because minimums shortly become the maximum. Others argued that capital is irrelevant to failures and several pointed out that the higher ratios may be counterproductive in that they may lead to riskier asset portfolios as banks seek to increase profits on limited assets.

While this regulation is concerned with, and thus emphasizes, capital, the Office has been and will continue to be, equally concerned about the other factors, such as asset quality, liquidity and management strength, which determine the overall soundness of a bank. The ratios in the regulation were adopted in consideration of banks' existing ability to meet the required and it is stressed that the requirement ratios are minimums which all banks are urged, and some will be required, to exceed. In particular, there is no incentive for banks to reduce liquidity, increase off-balance sheet activity, or structure riskier asset portfolios, since doing so will result in a requirement to maintain higher capital ratios.

There was extensive support for the notion of a level playing field *i.e.*, uniform requirements for both large and small banks. This is embodied in the final regulation. Many commentors pointed out the continuing inequality between banks and savings and loan associations and urged the agencies to work with the Federal Home Loan Bank Board to achieve equal capital requirements for all financial institutions. The Office agrees that capital requirements should be similar for all types of depository institutions. However, concern for competitive equality cannot overrule concern for the soundness of the banking system. The Office will continue to work for increases in the capital required for other types of financial institutions that compete with banks.

Several commentors urged that the agencies provide adequate time for institutions to reach the new minimum requirements. One believed that the time allowed should be set forth in guidelines and another recommended that banks be given three years to reach the new minimums. Since "adequate time" will depend on how much capital an individual bank must raise, as well as extraneous factors such as market conditions, no universal deadline can be set. The Office will consider the circumstances of each bank and intends to allow each bank adequate time to reach the required minimums.

There was some disagreement on the specific ratios and on whether the emphasis should be on primary capital or total capital. One commentor argued that the emphasis should be on equity capital since it is the major source of market discipline. Another believed that a ratio of 5.5% primary capital would be sufficient and that there should be no secondary capital requirement. Three commentors stated that the 6% total capital ratio was appropriate but that the regulation placed too much emphasis on primary capital. One of these commentors argued that a higher percentage of secondary capital should be allowed because it protects depositors and creditors. Moreover, it is difficult to sell new stock and new stock sales pose the problem of diluting existing shareholders' equity. It was suggested that the ratios instead be 5% primary capital and 1% secondary capital. The Office has emphasized primary capital because of its permanence, as well as the protection that it affords to depositors and creditors. As noted, most banks already meet or exceed the 5½% primary capital requirement and for those which do not, retained earnings offer an alternative to the sale of new stock to meet the requirements.

Finally, many commentors were disturbed by the frequency of changes in the agencies' requirements for capital because it is difficult to plan or operate efficiently with frequent changes in capital requirements. These commentors urged that this change be the last for some time. While the Office is aware of the problems which too frequent changes in capital requirements may pose, unforeseen conditions may necessitate change in the requirements in the future.

Primary Capital Definition

The major change in the final regulation is the inclusion of purchased mortage servicing rights in primary capital. This change and other issues pertaining to intangible assets are discussed in the section dealing with specific issues for comment (Issue No. 3).

Primary capital is defined in the regulation as the total of common and perpetual preferred stock, capital surplus, undivided profits, contingency and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 U.S.C. 1823(i), minority interests in consolidated subsidiaries, and the allowance for loan and lease losses; minus intangible assets except those representing purchased rights to service mortgage loans. Primary capital also includes mandatory convertible debt to the extent of 20% of the above components. The amount of mandatory convertible debt included in primary capital is limited because such debt does not represent equity until actually converted. Mandatory convertible debt means subordinated debt instruments which unqualifiedly require the issuer to exchange either common or perpetual preferred stock for such instruments by a date at or before the maturity of the instrument. The definition intentionally does not include subordinated debt that merely requires the issuer to sell stock in sufficient amounts to replace the debt obligation, even though these instruments are considered as primary capital under OCC's present guidelines. This form of mandatory convertible debt does not provide the same assurance that at maturity common or perpetual preferred stock will, in fact, be present to replace the debt. Those instruments approved by the Office as primary or secondary capital and issued prior to the effective date of this regulation will continue to be included in a bank's primary or secondary capital to the extent previously authorized, during the original term of the instrument.

Secondary Capital Definition

Secondary capital includes limited life preferred stock, subordinated notes and debentures and mandatory convertible debt that is not included in primary capital to the extent that the total of these items does not exceed 50% of the bank's primary capital. A bank may issue mandatory convertible debt, other subordinated debt or limited life preferred stock exceeding this 50% limitation, but such stock or debt will not be considered for capital adequacy or statutory purposes without the written approval of the Office. The final regulation changes this section of the proposal by deleting intangible assets from the definition of secondary capital and by imposing a 50% limit on secondary capital relative to primary capital. The reasons for these changes are discussed under the specific issues for comment (Issues Nos. 3, 5, and 6).

Minimum Capital Ratios

The regulation requires banks to have and maintain a ratio of total capital to adjusted total assets (as defined) of at least 6% and a ratio of primary capital to adjusted total assets of at least 5½%. These ratios apply to all national banks, regardless of size. However, the Office

retains the right to establish higher ratios for individual banks whose circumstances warrant a stronger capital base. In addition, banks which have entered into, or subsequently enter into a written agreement or which are or become subject to a cease and desist order under 12 U.S.C. 1818 (b) or (c) requiring higher minimum capital ratios for the bank, must achieve and maintain those higher ratios. Similarly, if higher minimum capital ratios have been or are required as a condition for approval of an application, the bank will be governed by those ratios.

The ratios must be achieved as of each Call Report date and will be calculated in terms of the bank's reported total and primary capital to its reported average adjusted total assets. Actual, end-of-quarter figures are to be used in computing the ratios with the exception of the figure for adjusted total assets. Instead, the average adjusted total assets figure should be used unless the bank is instructed otherwise by the Office. If adjusted total assets increase, on average, during the following quarter, the bank must increase its capital (unless it is already above the minimum) before the upcoming Call Report date, in order to be in compliance with the required ratios as of the Call Report date for that quarter.

Banks that are not able to achieve the ratios by the effective date of the rule will be required to submit to the Office an acceptable plan to achieve the minimum capital ratios within a reasonable time. The plan itself must be submitted within 60 days after the effective date of the rule and must set forth the means and time frames in which the bank will achieve the minimum ratios. The Office understands that banks that will need to raise or generate a substantial amount of capital to achieve the ratios will require a reasonable period of time in which to do so and the Office will take this into account in reviewing individual bank plans. Rather than a formal approval or acceptance process, the rule provides that the bank may consider its plan acceptable to the Office unless it is notified to the contrary. It should be noted, however, that under this provision, the Office may subsequently require changes in a bank's plan, such as an acceleration of the time schedule, in the event of changed circumstances. Because not all banks will have the required ratios at the time the final rule becomes effective, or be able to achieve the ratios quickly thereafter, the rule provides that a bank in compliance with an acceptable plan to achieve the ratios will not be considered to be in violation of the regulation.

Two commentors argued that the regulation does not provide sufficient time to formulate a capital plan. One believed that it should be more than 60 days, perhaps as much as six months, while the other urged that the time period be 120 days. Because capital planning already should be an on-going process, the Office believes that the 60-day period is sufficient. One commentor stated that it is impossible to raise capital quickly enough to meet the ratio by the next call report day and another that the ratios for a single period should not automatically trigger enforcement action; rather, the Office should look to a period of at least four quarters. The Office points out that the ratios can be met by reducing assets as well as raising capital. In addition, non-compliance for a single period will not automatically trigger enforcement action, although it will result in some supervisory response from the Office.

Finally, the Office has reserved the authority to permit a bank to operate with capital ratios below the minimum when, in the opinion of the Office, the circumstances justify such action. This provision might apply, for example, to a situation in which a bank in compliance with the minimum ratios would not be in compliance if it undertook a proposed acquisition that would dilute its capital or increase its assets. Such an acquisition, however, may be necessary or desirable to alleviate a troubled or emergency situation involving another bank. In such circumstances, when the Office believes that the acquisition should be approved, it may specifically authorize the acquiring bank to have capital ratios below the minimums during a specified period of time, *i.e.*, the time necessary for the bank to absorb the acquisition and increase its capital to again meet the minimums specified in the regulation. This provision is not intended to authorize banks below the required minimums to continue to operate with lower capital ratios or to authorize banks to reduce their capital.

Higher Capital Requirements for an Individual Bank

The minimum capital ratios set forth in the regulation are intended to apply to sound banks without any significant risks or problems. More capital may be appropriate or necessary for individual banks depending upon their circumstances. The International Lending Supervision Act specifically provides the Comptroller with the authority "to establish such minimum level of capital for a banking institution as the [Office], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." 12 U.S.C. 3907(a)(2). Higher minimum ratios may be established for a bank and required as a part of a written agreement or a cease and desist order under 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application. In addition, the final rule adopts the procedure in the proposed rule for setting higher required minimum capital ratios for an individual bank. Only two comments were received on the procedural aspects of the regulation. One supported the enforcement provisions overall and another concurred that the Office should be able to set higher requirements based on the circumstances of individual banks.

This part of the rule sets out examples of situations when higher minimum capital ratios may be necessary or appropriate and examples of the factors which the Office may consider in deciding what a bank's minimum capital ratios should be. These examples are not intended to be all inclusive because it is not possible to predict in advance each situation in which higher capital ratios may be necessary or every factor which should be considered in a particular situation. Generally, higher capital levels are necessary and will be required for banks exposed to greater than normal risks or requiring special supervisory attention.

The procedure provides for written notice from the Office to the bank indicating the capital ratios that the Office believes are appropriate for the bank, the date when they should be achieved, and an explanation of why those ratios are considered appropriate. The bank will have thirty days in which it may respond to the Office in writing. After the close of the bank's response period, or after the bank's response is received, if sooner, the Office will consider any response from the bank. Unless further information or clarification of the bank's response is required, or the time period is extended for good cause, the Office will reach a decision after the close of the response period. The 30-day time period for the Office's decision that was contained in the proposal has been deleted from the final rule. A required time frame for the Office's decision was determined to be unnecessary because in these cases, when the Office believes that higher capital ratios are necessary for a bank, the Office has an incentive to decide the matter as soon as possible. Moreover, a bank would not be prejudiced by a delay in the Office's decision because

delay preserves the status quo in favor of the bank.

After a decision, the Office will advise the bank in writing whether higher capital ratios are required for it and, if, so, what those ratios are and when they must be achieved. The Office also may require the bank to submit an acceptable plan to achieve the required ratios established for it. This procedure is intended to provide an informative and fair, but relatively uncomplicated and prompt method of addressing an individual bank's need for higher capital levels.

Directives

A directive is a form of order specifically authorized under the International Lending Supervision Act, 12 U.S.C. 3907(b)(2). Issuance of a directive is discretionary when a bank does not have or maintain capital at or above the level required for it, whether under the general minimum capital ratios set forth in the rule, under a decision establishing higher minimum capital ratios for the bank, under the terms of a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive also may be issued when a bank has failed to submit or is not in compliance with an acceptable plan to achieve its required minimum capital ratios.

The final rule adopts the procedures in the proposal without change, except for deletion of the 30-day time period for an Office decision. The time period was deleted here for the same reasons set forth in the proceeding section. The rule provides that the Office will notify a bank in writing of the Office's intention to issue a directive to the bank. The notice will include reasons for the action and the contents of the proposed directive. The bank will have thirty days in which to respond in writing to the notice. The response may state why a directive should not be issued; may propose alternative provisions for the directive; and/or may include a plan to achieve the bank's required minimum capital ratios. The response should include any information which the bank would have the Office consider in deciding whether to issue a directive or what the provisions of the directive should be. Failure to respond within the allotted time period will be deemed to be a waiver of any objections to the proposed directive. After the close of the bank's response period, or after receipt of the bank's response, if sooner, the Office will consider the bank's response and will decide whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form. Unless the time period is extended by the Office, for example, in cases where additional information or a clarification of the bank's response is needed, the Office will issue the directive, or notify the bank that a directive will not be issued, after the close of the bank's response period.

The terms of the directive will vary in each individual case. The directive may order the bank to achieve and maintain its required minimum capital ratios by a specified date; comply with a previously submitted plan to achieve those ratios; submit and comply with an acceptable plan to achieve the ratios; reduce assets or the rate of growth of assets, or restrict dividends in order to achieve its required capital ratios; or a combination of any of the above or similar actions.

A directive, or any plan submitted pursuant to a directive, is enforceable to the same extent as an effective and outstanding order issued pursuant to 12 U.S.C. 1818(b) which has become final. In addition, violation of a directive may result in civil money penalties against the bank or its officers, directors, employees, or other persons participating in the conduct of its affairs.

Because of the critical importance of adequate capital to the soundness of a bank's operations, the procedure for issuance of a directive has been designed to reach a resolution in a prompt, but fair manner and the Office intends to actively seek enforcement of directives in the event of noncompliance.

Discussion of the Specific Issues for Comment

The proposed rule specifically requested comment on ten numbered issues. A discussion of the comments received on each issue and the Office's resolution of the issues follows.

(1) Whether the definitions of capital and its components should be the same for the purposes of determining capital adequacy and for statutory purposes, such as the lending limits in 12 U.S.C. 84. The 29 commentors on this issue all agreed that the definition of capital should be the same for both capital adequacy and statutory purposes. One of the commentors, however, would include all secondary capital for capital adequacy purposes even if it is decided to exclude it from capital for statutory purposes. Two of the commentors believed that the definition of capital for statutory purposes could be based on primary capital alone if primary capital were to include mandatory convertible debt and intangibles.

The Office adopted one definition for both purposes in former Interpretive Ruling 12 CFR 7.1100 and believes that the definitions in this regulation and its accompanying interpretive ruling also should govern the determination of capital for both supervisory and statutory purposes since a common definition avoids complexity and confusion.

(2) Whether higher minimum capital ratios are appropriate or feasible. The Office received 30 comments on this issue with a substantial majority of the commentors opposed to any further increases, beyond those proposed, now or in the next year or two. Many of these respondents argued that the Office should not require more capital for banks in good condition. These commentors focused on the current low values of bank stocks in the markets and on the general crowding in the equity markets. They felt it would not be possible to raise significant additional capital externally under current conditions. Some argued that higher capital ratios would be counterproductive because they would reduce returns on equity and increase the cost of incremental capital. This, they felt, would encourage greater risk *e.g.*, reductions in liquid, low return assets to maintain profitability within the constraints on leverage. Additional problems with increased capital requirements which were cited included higher borrowing costs, reduced control of the Federal Reserve over the money supply, higher concentrations in the banking industry due to cost advantages and reduced credit availability. Several commentors suggested that higher primary capital requirements would be a disadvantage to U.S. banks versus foreign bank competitors. Only two comments endorsed higher capital levels and one of those believed they should be required before the next period of economic downturn. If higher capital is required in the future, several commentors suggested that it be in the form of secondary capital.

The Office recognizes the differing views of what constitutes adequate capital. There is general agreement, however, that capital in a bank should be sufficient to maintain public confidence in the institution; support the volume, type and character of the business conducted; provide for the possibilities of loss inherent therein; and permit the bank to continue to meet the reasonable credit requirements of the area served. The quantification of these factors into an appropriate ratio is the center of the controversy.

The Office feels strongly that the minimum capital levels imposed in this regulation are the most appropriate for the current economic environment in

which national banks compete. The negative aspects of a further increase in the capital requirements are recognized and will be considered as the issue of capital adequacy continues to be studied.

The Office considered the effect this regulation may have on the equity markets. Call Report data for September 30, 1984, indicates that of the 4,900 national banks, 72 will have, at a minimum, a $1.8 billion shortfall in primary capital. Additionally, 66 of those 72, plus 54 others will have, at a minimum, a $1.3 billion shortfall in total capital. The Office anticipates that most of this additional capital will come from retained earnings rather than the equity markets. For instance, over the three years ending 12/31/83, an average $2.3 billion per year was added to the capital accounts from retained earnings and additions to the loan loss reserves and only $246 million per year from equity markets.

(3) Whether the proposed regulation should "grandfather" capital components now considered primary capital but which would not be included in primary capital under the proposed regulation. This issue provoked the largest number of comments (58). The greatest matter of concern was the proposal to define all intangible assets as secondary capital rather than primary capital. The commentors overwhelmingly urged that all or some portion of intangible assets be included in primary capital.

Many commentors urged that if intangible assets are not included in primary capital, they should at least be grandfathered. Several commentors suggested that the Office follow GAAP in including intangibles in primary capital since GAAP requires the recording and amortization of intangibles, and exclusion of intangibles results in loss of value to shareholders and dilution through new equity. Many of the commentors argued that if intangibles are eliminated it will inhibit sound acquisitions and failing bank takeovers and create a disadvantage for banks *vis a vis* nonbank competitors. A common suggestion was that the Office should consider the composition of intangible assets noting, for example, that mortgage servicing rights have an objectively measurable market value and marketability. Many comments argued in favor of, and a few argued against, the inclusion in capital of specific intangible assets such as core deposits, goodwill, moratgage servicing rights and credit card franchises.

The Office carefully reviewed its position on intangible assets. It is fully recognized that there are substantial differences between the types of intangible assets in terms of the quality and marketability of the values they represent.

Intangible assets are characterized as indentifiable or unidentifiable. In banks, the former typically includes core deposit intangibles, mortgage servicing rights, and favorable leases whereas the latter is simply goodwill.

Core deposit intangibles are a form of intangible asset which can be acquired as a result of the purchase of assets and assumption of liabilities from one or more branch offices of another depository institution or as part of a business combination with another depository institution that has been accounted for as a purchase. Core deposit intangibles represent the value asssigned to the acquisition of a base of stable, low-cost deposits that can be used to fund earning assets. However, a bank cannot sell the core deposit intangibles it holds as an asset separately from the entire institution itself or some substantial part of it (i.e., one or more branch offices).

Mortgage servicing rights represent the right to preform the servicing function for a specific group or mortgage loans that are owned by others. In addition to being acquired in a purchase of all or part or another business enterprise, mortgage servicing rights can be acquired by themselves as a single asset. Accordingly, a bank can dispose of mortgage servicing rights, regardless of the manner in which they were obtained, either through the sale of the rights by themselves on in conjunction with the sale of a segment of the bank's business. One of the factors that distinguishes mortgage servicing rights from other intangible assets is the certainty and predictability of the cash flows coming in to the servicer. These cash flows form the basis for establishing the value of the mortgage servicing rights acquired. There exists today a fairly active market for servicing rights so that the actual sales price for mortgage servicing transactions in this market also helps to confirm the values ascribed to the rights carried on the bank's books. This secondary market also adds liquidity to the mortgage servicing rights, providing the mortgage servicers with the opportunity to dispose of all or a portion of their servicing portfolios separately from the remainder of their business assets. This marketability feature represents a key difference between mortgage servicing rights and other classes of intangibles.

Favorable leases are a type of intangible assets that would be acquired as part of the purchase of all or a segment of another business enterprise that leases property in the conduct of its business. This asset can be disposed of in conjunction with the transfer of the business that uses the leased property or by subleasing the property to another party, unless of course, the bank uses the property in the conduct of its business.

In either case, however, the disposal of this intangible asset can only be accomplished by effectively relinquishing the right to use the property—that is, the intangible cannot be sold by itself. This illustrates one major difference between favorable leases and mortgage servicing rights in that the servicing rights can be sold by themselves whereas the "favorable lease" intangible cannot.

Goodwill can be acquired as a result of a business combination accounted for as a purchase or through the acquisition of a significant part of another company's business (such as a branch network). Similarly, in order to dispose of goodwill, a bank would have to be a target company in a purchase business combination or it would have to sell branch offices or some major segment of its business activities. Hence, a bank cannot sell goodwill separate and apart from itself.

Based on the preceding descriptions of intangible assets, the principal considerations in evaluating their quality for purposes of capital adequacy would appear to be: (1) Whether the asset can be separated from the remainder of the bank's assets and sold or otherwise disposed of apart from the bank as a whole, or a portion of the bank's business; (2) the marketability of the intangible asset; and (3) the certainty of the cash flows represented by the asset.

In this regard, mortgage servicing rights are the most favorable class of intangibles when evaluated against the three considerations mentioned above and, in some aspects, possess attributes very similar to certain items treated as tangible assets. Core deposit intangibles, goodwill and favorable leaseholds cannot be sold separately by an institution. These classes of intangibles are not marketable to the same extent as mortgage servicing rights nor do they have the same degree of certainty of cash flows. For this reason, the OCC has decided to allow national banks to count 100% of mortgage servicing rights as primary capital at the bank level; all other intangible assets are being deducted from primary capital because they lack the combination of separability, marketability and certainty of cash flow which would result in the support that a component of capital

must be able to provide. However, the Office has determined that intangible assets previously accounted for in accordance with the Office's instructions may continue to be included in primary capital to the extent of 25% of tangible primary capital. (If mortgage servicing rights already exceed this figure, however, other intangibles may not be included in primary capital.)

Equity commitment notes, a form of mandatory convertible security, were to be eliminated from primary capital and considered to be secondary capital under the proposal. Equity commitment notes require that the convertible debt be repaid solely from the proceeds of sale of common or perpetual preferred stock. Eight comments were received urging that equity commitment notes be included in primary capital. Additional comments suggested that various percentage limitations be imposed. The grandfathering of these instruments received overwhelming support, mainly because the Office previously approved their inclusion in primary capital up to 10% of primary capital, exclusive of mandatory convertible securities.

After careful review of the comments, the Office has decided to no longer allow equity commitment notes to qualify as primary capital. This form of mandatory convertible debt does not provide the same assurance that at maturity common or perpetual preferred stock will, in fact, be present to replace the debt.

If the market in a bank's stock ceases to exist, for all intents and purposes, then the bank cannot market the stock as originally planned. This would prevent these notes from fulfilling the element of permanence necessary in primary capital. However, recognizing that this change would have potentially significant adverse impact on national banks that have used this instrument in the past as a means of raising large amounts of capital, the Office will continue to include in primary capital previously approved equity commitment notes during the effective term of the instruments.

(4) *Whether the reserve for loan and lease losses should be excluded from capital.* Thirty-nine respondents addressed this issue with 35 strongly favoring continued inclusion of the entire reserve for loan and lease losses in primary capital. They noted particularly that inclusion of the loan loss reserve encourages banks to establish and maintain adequate reserves. In addition, several commentors noted that the reserve has the characteristics of permanence and subordination.

The Office believes that the allowance for possible loan and lease losses should be considered as part of primary capital because it is: (1) A first reserve against which losses may be charged; (2) created by charges against bank earnings which would otherwise be added to the equity accounts; and (3) because it reinforces public confidence in the banking system by protecting against future uncertainty. Thus, the final regulation will continue the OCC's current practice of including all of the reserve for loan and lease losses in primary capital.

(5) Whether limits should be placed on the amount of subordinated notes and debentures and limited life preferred stock that is included in secondary capital. The Office received 28 comments on this issue covering both the general issue of whether restrictions were appropriate or not, as well as comments on specific restrictions. Four commentors agreed generally that there should be restrictions on subordinated debt. Seven commentors agreed generally with the current restrictions. However, four commentors argued that there should be no restrictions. Maturity and discounting appeared to be the most significant issues. Several commentors felt that a minimum maturity requirement should allow flexibility in response to market conditions. Two banks opposed the five-year amortization schedule and recommended that all subordinated debt and limited life preferred stock be included in total capital so long as the bank has a plan to replace the capital (if the bank would otherwise fall below the minimum requirements) according to *pro forma* schedules of reductions in capital ratios based on the maturity dates of the secondary capital.

After consideration of the alternatives, the Office has concluded that discounting to maturity for secondary capital instruments is no longer necessary. The capital plans proposed by individual banks to replace maturing instruments will be considered by the Office in assessing the capital adequacy of an individual bank. A bank must be cognizant of future capital needs, including the replacement of maturing instruments, to remain in compliance with the minimum capital ratios.

The seven year average weighted maturity restriction will remain in place. The Office has concluded that the test of permanence, albeit finite, is best met by requiring such a minimum maturity. Although specific characteristics in each bank determine the best maturity structure for that institution, such an approach would be impossible to administer given the 4,900 national banks the Office supervises.

The other existing requirements for subordinated debt are considered necessary for debt which will be included in capital. These requirements are contained in the interpretive ruling which acccompanies the regulation.

(6) Whether limits should be placed on the amount of secondary capital that can be included in total capital. The Office received 33 comments on this issue. Nine commentors agreed with the current policy that secondary capital should be limited to 50% of the amount of primary capital. Three commentors agreed generally that there should be a limitation on the amount of secondary capital. By far the greater number of commentors, however, argued that secondary capital should not be limited because if provides significant protection for depositors and creditors and is inherently limited by the market. If there is a limit, it should be applied only for 12 U.S.C. 84 or other similar purposes, but not for the purpose of capital adequacy. Four respondents noted that secondary capital increases bank liquidity and reduces market risks. Therefore, the Office should emphasize total capital and not merely primary capital.

The Office recognizes the fact that the issuance of such instruments is largely a managerial function and does not wish to needlessly impose constraints on banker's efforts to acquire funds in the most economically prudent manner. Escalating competition from traditional and nontraditional sources, inflation and other developments in financial markets underscore the propriety of banks securing funds at reasonable costs in order to enhance liquidity and improve earnings. Notwithstanding the Office's belief that use of these instruments can be beneficial and that they exhibit many capital characteristics, it must be stressed that they lack permanence. In order to satisfy these prudential concerns for capital, the Office will restrict the total amount of secondary capital that may be included as capital for capital adequacy and statutory purposes to 50% of primary capital unless written approval is received from the Office. In addition, the Office believes that a single definition of capital for adequacy and statutory limitation purposes is desirable to eliminate confusion. However, the Office encourages prudent liquidity and liability management that may dictate that a particular bank should issue secondary capital

instruments totaling more than the 50% limitation.

(7) Whether the minimum capital requirements should be tailored to the risk composition and liquidity of assets. The Office received 39 comments on this issue. Many of the commentors supported the notion that capital ratios should be based on risk assets. In their view, it would be fairer than an across-the-board ratio. Some commentors specifically noted that the Office should require additional capital for higher risk and/or lower liquidity. Other commentors agreed that a capital-to-risk assets ratio is ideal. But they also all noted that it would be difficult to implement. In particular, several commentors noted that it would be hard to determine the quality of assets impartially and others concluded that such a system would be too complicated. The most favored solution appeared to be agency consideration of the mix of assets and liabilities in assessing an individual bank's capital adequacy rather than a regulatory formula. Many comments were received on specific items of a risk asset/liquidity capital ratio. Three stated that the Office must consider off-balance sheet risk. Most of the specific comments, however, focused on assets considered to be "risk-free" which should be subtracted from the asset side of the ratio. Three commentors argued generally that risk free or liquid assets should be excluded or discounted from total assets for purposes of computing the ratios.

The Office appreciates the view that a strict capital/asset ratio does not account for the great differences in banks' balance sheet composition and off-balance sheet risks. While the Office has traditionally recognized that certain types of banks require higher capital ratios, e.g., newly chartered institutions, banks receiving special supervisory attention, those institutions experiencing rapid growth, or banks which may be affected adversely due to the activities or condition of their holding company and affiliates; it is also apparent that more capital may be necessary when a bank has a high proportion of off-balance sheet risk, is exposed to a high degree of asset depreciation, interest rate, funding or transfer risk or has a low level of liquid assets in relation to short term liabilities.

The Office proposes to study the various methods of deriving a ratio based on risk assessment to determine the feasibility of either using a risk asset ratio in conjunction with the traditional capital/asset ratio or possibly as a substitute. Until such time as this study is complete, the Office will continue to assess the risk exhibited in an individual bank's balance sheet to determine if that bank should maintain capital ratios above the minimums set forth in the regulation.

(8) Whether the capital ratios should be calculated on the basis of average or actual total assets. The Office received 35 comments on this issue with the commentors almost unanimously endorsing the average total assets figure on the grounds that it is fairer and that it smooths out the "bumps" in bank assets. Two believed that the total assets figure should be adjusted by subtracting average, rather than end-of-period intangibles and reserves for losses. One commentor stated that the ratio should be based on the average of the last four call reports in order to take account of seasonal fluctuations. One dissenting commentor argued that the total assets figure should be used since it is the only relevant figure if a bank does encounter problems. Moreover, that figure is better understood by bank analysts and depositors.

The final rule uses the average total assets figure as proposed. However, it clarifies that all other figures used in computing the ratios, such as the figures for capital, intangible assets, and the allowance for loan and lease losses should be the actual end-of-quarter figures. The Office does not want to require banks at the margin to make calculations prior to each increase in their asset portfolios. Similarly, the Office wishes to minimize the likelihood of inadvertent or technical violations. Therefore, in order to avoid these problems, yet assure that the ratios are maintained on a relatively constant basis, total and primary capital would be computed as of each Call Report date and the capital ratios calculated based on average total assets for the Call Report period. Use of the average total assets figure should eliminate the potential for inadvertant violations and simplify banks' internal procedures for compliance. End-of-quarter figures should be used for components of the ratios other than average total assets, because these components are less subject to fluctuation than assets. All of these figures already are required to be stated in Call Reports, and the report form likely will be amended to include a statement of the capital ratios.

Compliance on a quarterly basis is not unduly burdensome. Banks experiencing seasonal fluctuations in average total assets should plan for those variances by maintaining capital at a level sufficient to meet the required ratios during quarters when asset growth is expected to be high.

The Office is concerned that some banks may have total assets as of the Call Report dates or otherwise that are substantially higher than their average total assets so that the bank, while technically in compliance with the regulation, actually is defeating its purpose, *i.e.*, to assure that banks have the minimum adequate level of capital to support their operations. Therefore, Call Report and examination data on total assets will be reviewed and compared with the reported average total assets figure. Where there is significant disparity between these figures on a repeated basis, the final rule allows the Office to require the bank to maintain its minimum capital ratios in relation to its actual total assets.

(9) Whether the zone concept provides useful guidance to banks. Comments were received on this issue from 28 respondents. The majority of the commentors supported continuation of the zone guidelines. Eight commentors stated that the zones are appropriate and useful. Six other commentors noted that the zones are particularly useful because they relate to the overall management and condition of the bank. Five commentors remarked that the zone concept is appropriate because of its flexibility but that the Office should retain the minimum capital requirements and the zones should be applied consistently. On the other hand, ten commentors were opposed to continuation of the zone system. Of these, six contended that the zones are not useful; that they are confusing and too discretionary. Five commentors stated that if the zones are retained they should be guidelines only and the Office should take action against individual banks on a case-by-case basis and not automatically by virtue of the zone concept.

After careful consideration of the issue and the intent of the regulation, the Office has decided to discontinue the use of the zone concept for assessing adequacy of total capital. The regulation is intended to set basic minimums for primary and secondary capital and provide for bank-by-bank analysis to determine if higher minimums are appropriate for a particular institution. This premise is clouded by the inclusion of zones which may be construed to imply that a bank is adequately capitalized because it falls within a particular zone, when in fact an analysis by this Office indicates that higher capital is necessary for the safe and sound operation of the bank. The regulation indicates the range of

administrative and supervisory actions which the Office may take if a bank does not have the minimum capital ratios required for it or has not submitted or complied with an acceptable plan to achieve those ratios. Since the appropriate supervisory action must be determined on a case-by-case basis, the zone concept is no longer considered particularly helpful.

(10) Whether the minimum capital requirement should apply to federal branches and agencies. The Office received 18 comments on this issue. Domestic banks and others commented that in the interest of fairness and competitive equality, the minimum requirements should apply to federal branches and agencies. However, two federal branches and the Institute of Foreign Bankers urged for varying reasons that the requirements not be imposed on federal branches and agencies. One federal branch argued that working capital already includes cash balances of the head office and other branches, retained earnings and reserves. Another commentor stated that the requirement should not be imposed because the capital of the branch is important only with respect to the assets available in the U.S. if the parent fails and there is no evidence of a deficiency in the protection of U.S. customers of foreign banks. There would be no across-the-board competitive advantage to branches if this requirement was not imposed, since there are differing capital requirements for their parent banks.

The Office has determined that the capital ratios required by the regulation should not apply to federal branches and agencies because they already are subject to a parallel statutory requirement of a capital equivalency deposit based upon liabilities. Under 12 U.S.C. 3102(g), federal branches and agencies are required to maintain capital equivalency deposits which, at a minimum, equal 5% of liabilities with certain adjustments. However, the International Banking Act of 1978 (IBA) also mandates competitive equality between national banks and federal branches and agencies. Because the operations of federal branches and agencies are not inherently either more or less risky than those of national banks, the Office believes that federal branches and agencies should be subject to comparable capital adequacy requirements. However, since the IBA requires that the capital equivalency deposit consist of cash or investment securities and be computed as a percent of liabilities, a capital-to-assets ratio would be inappropriate for federal branches and agencies. Therefore, the Office is studying what increase, if any, in the capital equivalency-to-liabilities ratio would be comparable to the capital-to-assets ratio required for domestic banks. Such an increase, if necessary, will be proposed for comment before being adopted. Meanwhile, because a capital equivalency deposit higher than the statutory minimum may be appropriate for an individual federal branch or agency, due to its or its parent bank's condition or circumstances, 12 CFR Part 28 will be amended so that the procedural sections of this regulation (Part 3), but not the minimum capital-to-assets ratios, will apply to federal branches and agencies.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.)* the Comptroller of the Currency has certified that this regulation will not have a significant economic impact on a substantial number of small entities since nearly all small banks (those with total assets of less than $1 billion) already meet or exceed the primary and total capital ratios required by the regulation.

Executive Order 12291

The Comptroller of the Currency has determined that this regulation is a "major rule" and a regulatory impact analysis has been performed in connection with the Office's consideration of this rule. In reviewing the impact of the rule, the analysis considered that:

(1) 72 national banks have a shortfall, at a minimum, of $1.8 billion in primary capital;

(2) 66 of those banks, plus an additional 54, have a shortfall, at a minimum, of $1.3 billion in secondary capital;

(3) 389 national banks meet both minimums, but face credit and other risks that warrant higher capital ratios (the amount of capital they must raise cannot be easily estimated);

(4) Underwriting costs associated with raising needed capital could approach $185 million, the precise amount depending on the volume of funds raised in capital markets as opposed to the use of retained earnings; and

(5) Until capital ratios are met, national banks could reduce dividend payments below historical averages.

However, OCC believes the costs of the minimum capital ratios mandated by the rule are outweighed by the benefits. These benefits cannot be easily quantified, but include:

(1) An increased capacity, especially among large banks, to withstand losses associated with credit and other risks that are a normal part of banking;

(2) Increased stability in our financial system; and

(3) Increased capacity to fund economic growth.

A copy of the regulatory impact analysis may be obtained from the Office's Communications Division under procedures set fourth in 12 CFR 4.17 and 4.17a.

Paperwork Reduction Act

The paperwork burdens contained in this rule pertaining to: (1) The preparation of a written plan to increase capital by a national bank that does not have the minimum capital ratios specified in the regulation or individually required for it; and (2) the written response that a bank may make to the Office when notified that higher minimum capital ratios may be required for it; have been approved by the Office of Management and Budget pursuant to 44 U.S.C. 3504(h) and assigned control number 1557-0166.

Memorandum of Law Required by Section 4(a) of Executive Order 12291 for a "Major Rule"

This regulation is authorized by, and consistent with the intent of Congress as expressed in, the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) The Act provides in pertinent part that:

> Each appropriated Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

12 U.S.C. 3907(a)(1). The Comptroller of the Currency is the appropriate Federal banking agency for national banks (12 U.S.C. 3902; 12 U.S.C. 1813(q)) and is authorized by 12 U.S.C. 3909, as well as other existing authority (12 U.S.C. 1 *et seq.*, 93a, 1818) to issue regulations and interpretive rules defining "capital" and other related terms and carrying out the purpose of section 3907.

List of Subjects

12 CFR Part 3

Banks, Banking, Primary, Secondary and total capital, Minimum capital ratios, Procedures for establishing higher minimum capital ratios for an individual bank, Enforcement of minimum capital ratios, Issuance of directives.

12 CFR Part 7

National banks, Management and ownership rights, Other powers.

Authority and Issuance

Accordingly, pursuant to authority under 12 U.S.C. 93a, 3907, and 3909, the Comptroller of the Currency hereby amends Title 12 of the Code of Federal Regulations by adding a new Part 3 and amending Part 7 as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority for Part 7 is:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et. seq.*

2. By revising § 7.1100 to read as follows:

§ 7.1100 Capital and surplus.

(The text of this section has been superseded by 12 CFR Part 3. Any reference in this chapter to § 7.1100 shall be considered to be a reference to 12 CFR Part 3.)

3. By adding a new Part 3 to read as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

Subpart A—Authority and Definitions

Sec.
3.1 Authority.
3.2 Definitions.
3.3 Transitional Rules.
3.4 Reservation of authority.

Subpart B—Minimum Capital Ratios

3.5 Applicability.
3.6 Minimum capital ratios.
3.7 Plan to achieve minimum capital ratios.
3.8 Reservation of authority.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

3.9 Purpose and scope.
3.10 Applicability.
3.11 Standards for determination of appropriate Individual Capital Ratios.
3.12 Procedures.
3.13 Relation to other actions.

Subpart D—Enforcement

3.14 Remedies.

Subpart E—Issuance of a Directive

3.15 Purpose and scope.
3.16 Notice of intent to issue a directive.
3.17 Response to notice.
3.18 Decision.
3.19 Issuance of a directive.
3.20 Change in circumstances.
3.21 Relation to other actions.

Interpretations

3.100 Capital and surplus.

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C 93a, 161, 1818; and 12 U.S.C. 3907 and 3909.

Subpart A—Authority and Definitions

§ 3.1 Authority.

This part is issued under the authority of 12 U.S.C. 1 *et. seq.*, 93a, 161, 1818; and the International Lending Supervision Act of 1983 (Pub. L. 98–181, Title IX, 97 Stat. 1153), 12 U.S.C. 3907 and 3909.

§ 3.2 Definitions.

For the purposes of this part:

(a) "Adjusted total assets" means the average total assets figure required to be computed for and stated in a bank's most recent quarterly "Consolidated Report of Condition and Income" (Call Report), plus the end-of-quarter allowance for loan and lease losses, minus end-of-quarter intangible assets not included in primary capital. The Office reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when necessary to carry out the purposes of this regulation.

(b) "Bank" means a national banking association or a District of Columbia bank.

(c) "Primary capital" means the sum of (c) (1), (2) and (3) of this section.

(1) Common stock, perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock), net worth certificates issued pursuant to 12 U.S.C. 1823(i), minority interests in consolidated subsidiaries, and allowances for loan and lease losses; minus intangible assets;

(2) Purchased mortgage servicing rights; and

(3) Mandatory convertible debt to the extent of 20% of the sum of (c) (1) and (2) of this section.

(d) "Secondary capital" means the sum of (d) (1) and (2) of this section, to the extent that this figure does not exceed 50% of the bank's primary capital: (1) Mandatory convertible debt that is not included in primary capital; and (2) limited life preferred stock and subordinated notes and debentures. These instruments must meet the requirements set forth in 12 CFR 3.100 or otherwise published by the Office (A bank may issue mandatory convertible debt, other subordinated debt or limited life preferred stock in amounts exceeding the limitation in this paragraph, but such stock or debt shall not be considered capital for capital adequacy or statutory purposes without the written approval of the Office.).

(e) "Total capital" means the sum of primary capital and secondary capital. The end-of-quarter figures as of the Call Report date shall be used in computing the bank's capital ratios.

§ 3.3 Transitional Rules.

(a) Instruments approved by the Office as primary or secondary capital and issued prior to the effective date of this regulation may continue to be included in a bank's primary or secondary capital to the extent previously authorized, during the original effective term of the instrument.

(b) Intangible assets (other than mortgage servicing rights) purchased prior to the effective date of this regulation and accounted for in accordance with the instructions of the Office, may continue to be included in primary capital up to 25% of the sum of § 3.2(c)(1).

§ 3.4 Reservation of Authority.

Notwithstanding the definitions of "primary capital" and "secondary capital" in § 3.2 (c) and (d), the Office may find that a particular type of purchased intangible asset or a newly developed or modified capital instrument constitutes or may constitute "primary capital" or "secondary capital," and the Office may permit one or more banks to include all or a portion of such intangible asset or funds obtained through such capital instrument as primary or secondary capital, permanently or on a temporary basis, for the purposes of compliance with this Part or for other purposes. Similarly, the Office may find that a particular asset or primary or secondary capital component has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of primary or secondary capital.

Subpart B—Minimum Capital Ratios

§ 3.5 Applicability.

This subpart is applicable to all banks unless the Office determines, pursuant to the procedures set forth in Subpart C, that different minimum capital ratios are appropriate for an individual bank based upon its particular circumstances, or unless different minimum capital ratios have been established or are established for an individual bank in a written agreement or a temporary or final order pursuant to 12 U.S.C. 1818 (b) or (c), or as a condition for approval of an application.

§ 3.6 Minimum capital ratios.

A bank must have and maintain total capital equal to a least 6 percent of adjusted total assets and primary

capital equal to at least 5½ percent of adjusted total assets.

§ 3.7 Plan to achieve minimum capital ratios.

Any bank having total or primary capital ratios less than the minimums set forth in § 3.6 shall, within 60 days of the effective date of this regulation, submit to the Office a plan describing the means and schedule by which the bank shall achieve the minimum capital ratios. The plan may be considered acceptable unless the bank is notified to the contrary by the Office. A bank in compliance with the acceptable plan to achieve the minimum capital ratios will not be deemed to be in violation of § 3.6.

§ 3.8 Reservation of authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

§ 3.9 Purpose and scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios for an individual bank above the ratios that would otherwise be applicable to the bank under § 3.6. The Comptroller is authorized under 12 U.S.C. 3907 (a)(2) to establish such minimum capital requirements for a bank as the Office, in its discretion, deems necessary or appropriate in light of the particular circumstances of that bank. Proceedings under this subpart also may be initiated to require a bank having capital ratios above those set forth in § 3.6, or other legal authority to continue to maintain those higher ratios.

§ 3.10 Applicability

Higher minimum capital ratios may be required for an individual bank when the Office believes that the bank's capital is or may become inadequate in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank which has or is expected to have losses resulting in capital inadequacy;

(d) A bank having a high proportion of off-balance sheet risks, especially standby letters of credit; or exposed to a high degree of asset depreciation or interest rate, funding, transfer, or similar risks; or having a low level of liquid assets in relation to short term liabilities;

(e) A bank that is growing rapidly, either internally or through acquisitions; or

(f) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships, including concentrations of credit.

§ 3.11 Standards for determination of appropriate individual minimum capital ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Office's determination that higher minimum capital ratios are appropriate or necessary for the bank;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);

(d) The bank's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and

(e) The views of the bank's directors and senior management.

§ 3.12 Procedures.

(a) *Notice.* When the Office determines that minimum capital ratios above those set forth in § 3.6 or other legal authority are necessary or appropriate for a particular bank, the Office will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable), and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the bank.

(b) *Response.* (1) The bank may respond to any or all of the items in the notice. The response should include any matters which the bank would have the Office consider in deciding whether individual minimum capital ratios should be established for the bank, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the time period when, in the opinion of the Office, the condition of the bank so requires, provided that the bank is informed promptly of the new time period, or with the consent of the bank. In its discretion, the Office may extend the time period for good cause.

(2) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the bank's response period, the Office will decide, based on a review of the bank's response and other information concerning the bank, whether individual minimum capital ratios should be established for the bank and, if so, the ratios and the date the requirements will become effective. The bank will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the bank.

(d) *Submission of plan.* The decision may require the bank to develop and submit to the Office, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the bank by the date required.

(e) *Change in circumstances.* If, after the Office's decision in paragraph (c), there is a change in the circumstances affecting the bank's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the bank or the Office may propose to the other a change in the minimum capital ratios for the bank, the date when the minimums must be achieved, or the bank's plan (if applicable). The Office may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Office's original decision and any plan required under that decision shall continue in full force and effect.

§ 3.13 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for a bank may be established or revised through a written agreement or cease and desist proceedings under 12 U.S.C. 1818 (b) or (c) (12 CFR 19.0–19.21), or as a condition for approval of an application.

Subpart D—Enforcement

§ 3.14 Remedies.

A bank that does not have or maintain the minimum capital ratios applicable to it, whether established in Subpart B of

this regulation, in a decision pursuant to Subpart C, in a written agreement or temporary or final order under 12 U.S.C. 1818 (b) or (c), or in a condition for approval of an application, or a bank that has failed to submit or comply with an acceptable plan to attain those ratios will be subject to such administrative action or sanctions as the Office considers appropriate, including issuance of a Directive pursuant to Subpart E, other enforcement action, assessment of civil money penalties, and/or the denial, conditioning, or revocation of applications. Failure to achieve or maintain the minimum primary capital ratio also may be the basis for an action by the Federal Deposit Insurance Corporation to terminate federal deposit insurance. See 12 CFR 325.4(c).

Subpart E—Issuance of a Directive

§ 3.15 Purpose and scope.

This subpart is applicable to proceedings by the Office to issue a directive under 12 U.S.C. 3907(b)(2). A directive is an order issued to a bank that does not have or maintain capital at or above the minimum ratios set forth in § 3.6, or established for the bank under subpart C, by a written agreement under 12 U.S.C. 1818(b), or as a condition for approval of an application. A directive may order the bank to (a) achieve the minimum capital ratios applicable to it by a specified date; (b) adhere to a previously submitted plan to achieve the applicable capital ratios; (c) submit and adhere to a plan acceptable to the Office describing the means and time schedule by which the bank shall achieve the applicable capital ratios; (d) take other action, such as reduction of assets or the rate of growth of assets, or restrictions on the payment of dividends, to achieve the applicable capital ratios; or (e) a combination of any of these or similar actions. A directive issued under this rule, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.16. Notice of intent to issue a directive.

The Office will notify a bank in writing of its intention to issue a directive. The notice will state:

(a) Reasons for issuance of the directive; and

(b) The proposed contents of the directive.

§ 3.17. Response to notice.

(a) A bank may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the bank would have the Office consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the bank. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the bank received the notice. The Office may shorten the 30-day time period (1) when, in the opinion of the Office, the condition of the bank so requires, provided that the bank shall be informed promptly of the new time period; (2) with the consent of the bank; or (3) when the bank already has advised the Office that it cannot or will not achieve its applicable minimum capital ratios. In its discretion, the Office may extend the time period for good cause.

(b) Failure to respond within 30 days or such other time period as may be specified by the Office shall constitute a waiver of any objections to the proposed directive.

§ 3.18. Decision.

After the closing date of the bank's response period, or receipt of the bank's response, if earlier, the Office will consider the bank's response, and may seek additional information or clarification of the response. Thereafter, the Office will determine whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 3.19 Issuance of a directive.

(a) A directive will be served by delivery to the bank. It will include or be accompanied by a statement of reasons for its issuance.

(b) A directive is effective immediately upon its receipt by the bank, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Office.

§ 3.20 Change in Circumstances.

Upon a change in circumstances, a bank may request the Office to reconsider the terms of its directive or may propose changes in the plan to achieve the bank's applicable minimum capital ratios. The Office also may take such action on its own motion. The Office may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

§ 3.21 Relation to other administrative actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Office also may, in its discretion, take any action authorized by law, in lieu of a directive, in response to a bank's failure to achieve or maintain the applicable minimum capital ratios.

Interpretations

§ 3.100 Capital and surplus.

(a) *Capital.* The term "capital" as used in provisions of law relating to the capital of national banking associations shall include the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired.

(b) *Capital Stock.* The term "capital stock" as used in provisions of law relating to the capital stock of national banking associations, other than 12 U.S.C. 101, 177 and 178, shall have the same meaning as the term "capital" set forth in paragraph (a) of this section.

(c) *Surplus.* The term "surplus" as used in provisions of law relating to the surplus of national banking associations means the sum of (c) (1), (2), (3) and (4) of this section:

(1) Capital surplus; undivided profits; reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock); net worth certificates issued pursuant to 12 U.S.C. 1823(i); minority interests in consolidated subsidiaries; and allowances for loan and lease losses; minus intangible assets;

(2) Purchased mortgage servicing rights;

(3) Mandatory convertible debt to the extent of 20% of the sum of paragraphs (a) and (c) (1) and (2) of this section;

(4) Other mandatory convertible debt, limited life preferred stock and subordinated notes and debentures to the extent set forth in paragraph (f)(2) of this section.

(d) *Unimpaired Surplus Fund.* The term "unimpaired surplus fund" as used in provisions of law relating to the unimpaired surplus fund of national banking associations shall have the same meaning as the term "surplus" set forth in paragraph (c) of this section.

(e) *Definitions.* (1) "Allowance for loan and lease losses" means the balance of the valuation reserve on December 31, 1968, plus additions to the reserve charged to operations since that date, less losses charged against the allowance net of recoveries.

(2) "Capital surplus" means the total of those accounts reflecting (i) amounts paid in in excess of the par or stated value of capital stock; (ii) amounts contributed to the bank other than for capital stock; (iii) amounts transferred from undivided profits pursuant to 12 U.S.C. 60; and (iv) other amounts transferred from undivided profits.

(3) "Intangible assets" means those purchased assets that are to be reported as intangible assets in accordance with the "Instructions—Consolidated Reports of Condition and Income" (Call Report).

(4) "Limited Life preferred stock" means preferred stock which has a maturity or which may be redeemed at the option of the holder.

(5) "Mandatory convertible debt" means subordinated debt instruments which unqualifiedly require the issuer to exchange either common or perpetual preferred stock for such instruments by a date at or before the maturity of the instrument. The maturity of these instruments must be 12 years or less. In addition, the instrument must meet requirements (i) through (v) for subordinated notes and debentures contained in paragraph (f)(1) of this section or other requirements published by the Office.

(6) "Minority interest in consolidated subsidiaries" means the portion of equity capital accounts of all consolidated subsidiaries of the bank that is allocated to minority shareholders of such subsidiaries.

(7) "Mortgage servicing rights" means the bank-owned rights to service for a fee mortgage loans that are owned by others.

(8) "Perpetual preferred stock" means preferred stock that does not have a stated maturity date and cannot be redeemed at the option of the holder.

(f) *Requirements and Restrictions: Limited Life Preferred Stock, Mandatory Convertible Debt, and Other Subordinated Debt*—(1) *Requirements.* Issues of limited life preferred stock and subordinated notes and debentures (except mandatory convertible debt) must have original weighted average maturities of at least seven (7) years to be included in the definition of "surplus." In addition, a subordinated note or debenture must also:

(i) Be subordinated to the claims of depositors;

(ii) State on the instrument that it is not a deposit and is not insured by the FDIC;

(iii) Be approved as capital by this Office;

(iv) Be unsecured;

(v) Be ineligible as collateral for a loan by the issuing bank;

(vi) Provide that once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year; and

(vii) Provide that no accelerated payment by reason of default or otherwise may be made without the prior written approval of the Office.

(2) *Restrictions.* The total amount of mandatory convertible debt not included in paragraph (c)(3) of this section, limited life preferred stock, and subordinated notes and debentures considered as surplus is limited to 50 percent of the aggregate amount of primary capital, as defined in 12 CFR 3.2(c), unless specifically approved in writing by the Office.

(3) *Reservation of Authority.* The OCC expressly reserves the authority, in exigent circumstances, to waive the minimum maturity requirement and the percentage restriction set forth in paragraphs (f) (1) and (2) of this section, in order to allow the inclusion of other limited life preferred stock, mandatory convertible notes and subordinated notes and debentures in the capital base of any national bank for capital adequacy purposes. The OCC further expressly reserves the authority in exigent circumstances, to impose more stringent conditions than those set forth in paragraphs (f) (1) and (2) of this section in order for any component of primary or secondary capital to be included, in whole or in part, as part of a national banking association's capital and surplus for any purpose.

(Approved by the Office of Management and Budget under control number 1557-0166.)

Dated: February 12, 1985.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85-6127 Filed 3-13-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-47; Amdt. 39-5008]

Airworthiness Directives; Sikorsky Model S-76A Helicopters Certificated in All Categories.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Sikorsky S-76A helicopters by individual telegrams. This AD requires inspections of the engine compartment center firewall for proper installation, fit, and clearance with the rotating tail rotor driveshaft and prescribes corrective modifications and repairs if unsafe conditions are found. This AD is needed to prevent damage to the tail rotor driveshaft and subsequent loss of directional control of the helicopter which may occur if the engine compartment center firewall is not correctly installed.

EFFECTIVE DATE: Effective March 7, 1985, as to all persons except those persons to whom it was made immediately effective by telegraphic AD Nos. T84-19-51 issued September 27, 1984, and T84-19-51 R-1 issued October 15, 1984, which contained this amendment.

ADDRESSES: The applicable customer service notices (CSN), alert service bulletin (ASB), and appropriate sections of the maintenance manual (MM) may be obtained from United Technologies Corporation, Sikorsky Aircraft Division, North Main Street, Stratford, Connecticut 06601.

Copies of the CSN, ASB, and sections of the MM are contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113 or (617) 273-7001.

SUPPLEMENTARY INFORMATION: On September 27, 1984, telegraphic AD No. T84-19-51 was issued and made effective immediately as to all known

U.S. owners and operators of Sikorsky S–76A helicopters. The telegraphic AD required: (1) A one-time inspection of the engine compartment center firewall for missing fasteners in helicopters that have incorporated either the modification prescribed by optional Sikorsky CSN 76–111A or the factory-installed engine compartment center firewall, (2) a one-time inspection for clearance between the center firewall and the tail rotor driveshaft, and (3) a one-time inspection for a positive closure of the engine aft cowling in the area of the center firewall apex. The AD also prescribes repairs and/or modifications if unacceptable conditions are found. Telegraphic AD action was necessary to prevent loss of directional control of the helicopter which could occur if damaged or improperly installed firewall components contact and damage the rotating tail rotor driveshaft.

On October 15, 1984, telegraphic AD No. T84–1951 R1 was issued and made effective immediately as to all known U.S. owners and operators of Sikorsky S–76A helicopters. The revision was issued to correct an error in the identification of a part number and to add an alternate telephone number to the paragraph entitled **FOR FURTHER INFORMATION CONTACT** in previously issued telegraphic AD T84–19–51.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued September 27, 1984, and October 15, 1984, to all known U.S. owners and operators of Sikorsky S–76A helicopters. These conditions still exist, for helicopters manufactured with serial numbers prior to 760340, after which corrective action to alleviate the need for inspections and modifications has been accomplished by the manufacturer. Therefore, the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation only involves a modification and inspection cost of $400 per helicopter applicable to a fleet of 282 helicopters for a total cost of $112,800. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Sikorsky Aircraft: Applies to Model S–76A helicopters Serial Numbers 76006, 76007, 760001 through 760339 certificated in all categories.

Compliance is required prior to further flight, unless already accomplished.

To prevent operation with damaged, bent, or fractured center firewall support stiffeners or doublers which could cut into the tail rotor driveshaft and cause loss of directional control of the helicopter, accomplish the following:

(a) Inspect the forward center firewall sections for missing fasteners and proper fit, as required in paragraphs E(1) through E(5)(C) of Sikorsky Alert Service Bulletin (ASB) 76–53–25 or FAA approved equivalent.

(b) If doubler, Part Number (P/N) 76070–20057–101, is cracked or fails to conform to the firewall contour or to the limits specified in ASB 76–53–25, paragraph E(5)(B), remove and replace as per paragraph E(5)(D) or FAA approved equivalent.

(c) If the rivets are not installed as required in paragraph (a) above, comply with paragraph E(5)(E) of ASB 76–53–25 or FAA approved equivalent.

(d) Remove the core section from the horizontal seal, P/N 76304–07003–127 or 76304–07003–137, on the aft engine cowl center section fixed or adjustable firewall assembly, P/N 76304–07003–041 or 76304–07003–044, respectively.

(e) Inspect stiffeners and doublers used to support the center firewall installation for fractures, distortions, or damage. Assure that the forward edges of the removable center firewall are properly engaged in the slots.

(f) Inspect the area between the number 1 section of the tail rotor driveshaft called out in Sikorsky Maintenance Manual (MM) SA 4047–76–2, Section 66–40–00, Figure 401, and the engine compartment center firewall for clearance in accordance with section 5–50–00 of the Airworthiness and Inspection Requirement Manual. If inadequate clearance is found, contact the Boston Aircraft Certification Office (617) 273–7113 or (617) 273–7001 prior to further flight.

(g) Helicopters not modified in accordance with Sikorsky Customer Service Notice 76–111 are required to accomplish the inspection of paragraph (f) of this AD only.

(h) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate helicopters to a base for accomplishment of this AD.

(i) Alternate repairs, modifications, or other means of compliance with the AD which provide an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective March 7, 1985, as to all persons except those persons to whom it was made immediately effective by telegraphic AD's T84–19–51 issued September 27, 1984, and T84–19–51R1 issued October 15, 1984, which contained this amendment.

Issued in Forth Worth, Texas, on Feburary 20, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–6032 Filed 3–11–85; 10:34 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 440

[Docket No. 85N–0012]

Antibiotic Drugs; Sterile Amdinocillin

Correction

In FR Doc. 85–4587 beginning on page 7764 in the issue of Tuesday, February 26, 1985, make the following corrections:

§ 436.353 [Corrected]

1. On page 7765, first column, seventh line "t^{R}" should read "t_R"; and in the eighth line, "w^{R}" should read "w_R".

§ 440.2a [Corrected]

2. On the same page, third column, paragraph (b)(1), seventh line, "(3)" should read "(3 ".

BILLING CODE 1505–01–M

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21 CFR Parts 520 and 556

Oral Dosage Form New Animal Drugs Not Subject to Certification; Tolerances for Residues of New Animal Drugs in Food; Clorsulon Drench

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories.

providing for safe and effective use of clorsulon drench for treating cattle for immature and adult liver fluke infestations and to provide for a tolerance for residues of clorsulon in foods.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed NADA 136–742 providing for safe and effective oral use of Curatrem™ (clorsulon) 8.5 percent drench for the treatment of immature and adult liver fluke (*Fasciola hepatica*) infestations in cattle. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, a tolerance for residues of clorsulon in food and safe concentrations for residues in certain edible tissues are established.

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

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action is not expected to have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs—oral use.

21 CFR Part 556

Animal drugs, Foods, Residues.

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 Commission of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. Part 520 is amended by adding new § 520.462 to read as follows:

§ 520.462 Clorsulon drench.

(a) *Specifications.* The drug is a suspension containing 8.5 percent clorsulon (85 milligrams per milliliter).

(b) *Sponsor.* See No. 000006 in § 510.600(c) of this chapter.

(c) *Conditions of use. Cattle*—(1) *Amount.* One-quarter fluid ounce per 200 pounds of body weight (7 milligrams per kilogram or 3.2 milligrams per pound of body weight).

(2) *Indications for use.* For the treatment of immature and adult liver fluke (*Fasciola hepatica*) infestations in cattle.

(3) *Limitations.* Using dose syringe, deposit drench over back of tongue. Do not treat cattle within 8 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 556 is amended by adding new § 556.163 to read as follows:

§ 556.163 Clorsulon.

Tolerances are established for residues of clorsulon in cattle as follows:

(a) The tolerance for clorsulon (market residue) in kidney (target tissue) is 1.0 part per million. A marker residue of 1.0 part per million corresponds to a total residue of 3.0 parts per million in kidney.

(b) The safe concentrations for total clorsulon residues in uncooked edible cattle tissues are: muscle, 1.0 part per million; liver, 2.0 parts per million; kidney, 3.0 parts per million; and fat, 4.0 parts per million.

Effective date. March 14, 1985.

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

Dated: March 8, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–6030 Filed 3–13–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 601 and 602

[T.D. 8011]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations; amendment of the Statement of Procedural Rules.

SUMMARY: This document provides final regulations that implement requirements of the regulations promulgated by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, which require that agencies display control numbers assigned by that Office to the agency's regulations that solicit or obtain information from the public. By displaying these control numbers, these regulations provide necessary guidance to taxpayers subject to reporting or recordkeeping requirements.

DATES: The amendments to the regulations are effective March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Thompson Baker of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3294).

SUPPLEMENTARY INFORMATION: On March 31, 1983, the Office of Management and Budget published final regulations under the Paperwork Reduction Act of 1980 (48 FR 13689). Sections 1320.12, 1320.13, and 1320.14 of those regulations require that agencies display control numbers assigned by the Office of Management and Budget to certain of the agency's regulations that solicit or obtain information from ten or more members of the public. These regulations set forth these control numbers in tabular form.

Non-Application of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Because this regulation relates merely to an agency procedure for carrying out the requirement that OMB control numbers be displayed, the Internal

Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this regulation is not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of this regulation is Susan Thompson Baker of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the regulation, both substantively and stylistically.

List of Subjects

26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of Information, Taxes.

26 CFR Part 602

OMB control numbers, Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Subchapter H of Chapter 1 of 26 CFR is amended as follows:

PART 601—[AMENDED]

Paragraph 1. A new Subpart I is added at the end of Part 601 immediately following Subpart H. New Subpart I reads as follows:

Subpart I—OMB Control Numbers Under the Paperwork Reduction Act

§ 601.9000 OMB control numbers for the statement of procedural rules.

(a) *Purpose.* This section collects and displays the control numbers assigned to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this section (together with 26 CFR Part 602) comply with the requirements of § 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act of 1980) for the display of control numbers assigned by OMB to collections of information of the Internal Revenue Service in the Statement of Procedural Rules. This section does not display control numbers assigned by OMB to collections of information of the Bureau of Alcohol, Tobacco, and Firearms in the Statement of Procedural Rules.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to collections of information of the Internal Revenue Service in regulations elsewhere than in the Statement of Procedural Rules, see 26 CFR Part 602.

(c) *Display.*

26 CFR 601 section where identified and described	Current OMB control number
§ 601.105(e)	1545-0091
§ 601.201(a)	1545-0819
§ 601.201(l)	1545-0819
§ 601.201(j)	1545-0019
§ 601.201(n)	1545-0019
§ 601.201(o)	1545-0019
§ 601.401	1545-0257
§ 601.401	1545-0023
§ 601.402 (c) and (d)	1545-0257
§ 601.402(e)	1545-0014
§ 601.403	1545-0257
§ 601.403(c)	1545-0023
§ 601.403(d)	1545-0024
§ 601.404 (d) and (f)	1545-0012
§ 601.504	1545-0150
§ 601.601	1545-0800

PART 602—[AMENDED]

Par. 2. A new Part 602 is added immediately following Part 601. Part 602 reads as follows:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 OMB control numbers

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR § 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR Part 601), see 26 CFR 601.9000.

(c) *Display*

26 CFR part or section where identified and described	Current OMB control number
§ 1.1-1	1545-0067
§ 1.31-2(a)	1545-0074
§ 1.37-1(c)	1545-0074
§ 1.37-3(b)	1545-0074
§ 1.41-4 (b) and (c)	1545-0074
§ 1.43-2(b)	1545-0074
§ 1.44A	1545-0068
§ 1.44A-3(a)	1545-0074
§ 1.44B-1	1545-0219
§ 1.44C	1545-0214
§ 1.44C-5 and 1.44C-6	1545-0780
§ 1.46-6	1545-0155
§ 1.46-1(p)	1545-0123
§ 1.47-1(b)	1545-0166
§ 1.47-1(e)(1)	1545-0166
§ 1.47-1(e)(3)	1545-0166
§ 1.47-1(h)	1545-0155
§ 1.47-3(d)	1545-0166
§ 1.47-3(f)	1545-0155
§ 1.47-3(h)	1545-0155
§ 1.47-4(a)	1545-0123
§ 1.47-5(a)	1545-0092
§ 1.47-6	1545-0099
§ 1.50A-1 through 1.50A-7	1545-0186
§ 1.50B-1 through 1.50B-5	1545-0186
§ 1.51-1(c)(3)	1545-0241
§ 1.52-1(b)	1545-0219
§ 1.52-1 through 1.52-3	1545-0219
§ 1.52-4	1545-0074
§ 1.56-1 through 1.56-5	1545-0174
§ 1.57-5 (a) and (b)	1545-0227
§ 1.58-1 (b)(2) and (c)	1545-0175
§ 1.61-2T	1545-0907
§ 1.61-4	1545-0187
§ 1.61-15	1545-0074
§ 1.62-1	1545-0139
§ 1.63-1	1545-0074
§ 1.71-1T	1545-0074
§ 1.72-4	1545-0074
§ 1.72-17(e)	1545-0074
§ 1.72-17A(c)	1545-0074
§ 1.72-17A(e)	1545-0074
§ 1.72-18(b)	1545-0074
§ 1.79-2	1545-0074
§ 1.79-3	1545-0074
§ 1.83-2 (b), (c), and (e)	1545-0074
§ 1.83-5(b)	1545-0074
§ 1.103-10(b)(2)(vi)(a)	1545-0123
§ 1.103-10(c)	1545-0123
§ 1.103-15AT	1545-0720
§ 1.103(n)-2T	1545-0874
§ 1.103(n)-4T	1545-0874
§ 1.105-4 through 1.105-10	1545-0069
§ 1.108(a)-1 and (a)-2	1545-0046
§ 1.119-1	1545-0067
§ 1.120-3(b)(1)	1545-0057
§ 1.120-3(d)(1)	1545-0057
§ 1.121-1 through 1.121-5	1545-0072
§ 1.127-2	1545-0768
§ 1.132-1T	1545-0907
§ 1.151-1(c)(3)	1545-0074
§ 1.152-3(c)	1545-0071
§ 1.152-4	1545-0074
§ 1.152-4T	1545-0074
§ 1.162-1 through 1.162-20	1545-0139
§ 1.163-5	1545-0786
§ 1.165-1 through 1.165-11	1545-0177
§ 1.165-11	1545-0786
§ 1.165-11(e)	1545-0074
§ 1.165-12	1545-0786
§ 1.166-4(c)	1545-0123
§ 1.167(a)-7(c)	1545-0172
§ 1.167(a)-11(a)	1545-0172
§ 1.167(a)-11(f)	1545-0172
§ 1.167(a)-11(g)(2)	1545-0152
§ 1.167(a)-12(e)	1545-0172
§ 1.167(d)-1	1545-0172
§ 1.167(e)-1(b)	1545-0172
§ 1.167(e)-1(c) (1) and (2)	1545-0172
§ 1.167(e)-1(d) (1) and (2)	1545-0172
§ 1.167(e)-2(h)	1545-0172
§ 1.167(j)-3(b)(5)	1545-0172
§ 1.167(j)-3(c)(2)	1545-0172
§ 1.167(k)-3(b)	1545-0074
§ 1.167(k)-4(a)(1)	1545-0074
§ 1.167(k)-4(b)	1545-0074
§ 1.167(k)-4(d)(1)	1545-0074
§ 1.167(l)-1(h)(5)	1545-0172
§ 1.167(o)-2(h)	1545-0172
§ 1.168-4(e)	1545-0172
§ 1.168-5(b)(1)	1545-0172
§ 1.170-1(a)(3) (ii) and (iii)	1545-0074

26 CFR part or section where identified and described	Current OMB control number
§ 1.170-2(a)(7)	1545-0074
§ 1.170-3(b)	1545-0123
§ 1.170A-1(a)(2) (ii) and (iii)	1545-0074
§ 1.170A-2(a)(4)	1545-0074
§ 1.170A-4A(b)	1545-0123
§ 1.170A-8(d)(2)(c)(iii)	1545-0074
§ 1.170A-9(e)(5)	1545-0052
§ 1.170A-9(g)	1545-0074
§ 1.170A-11(b)(2)	1545-0123
§ 1.170A-12	1545-0020
§ 1.170A-12(c)	1545-0074
§ 1.170A-12(e)(3)	1545-0074
§ 1.170A-13	1545-0754
§ 1.170A-13T	1545-0908
§ 1.171-3(a)	1545-0172
§ 1.172-1(c)	1545-0172
§ 1.172-11	1545-0074
§ 1.173-1(c)	1545-0172
§ 1.174-3(b)	1545-0152
§ 1.175-3	1545-0187
§ 1.175-6(d)	1545-0152
§ 1.177-1(a)(4)	1545-0172
§ 1.177-1(c)	1545-0172
§ 1.179-4 (a) and (b)	1545-0172
§ 1.180-2	1545-0074
§ 1.182-6	1545-0074
§ 1.183-1 through 1.183-4	1545-0195
§ 1.185-3(a)	1545-0172
§ 1.185-3(b)	1545-0152
§ 1.190-3 (a) and (c)	1545-0074
§ 1.194-2	1545-0735
§ 1.194-4	1545-0735
§ 1.213-1(d)(2)	1545-0074
§ 1.213-1(h)	1545-0074
§ 1.215-1T	1545-0074
§ 1.217	1545-0062
§ 1.243-3(b)	1545-0123
§ 1.243-4(c)	1545-0123
§ 1.243-4(e) (1) and (3)	1545-0123
§ 1.243-5(d)(3)(iv)	1545-0123
§ 1.243-5(f)(4)	1545-0123
§ 1.248-1(c)	1545-0172
§ 1.250-1(d)	1545-0132
§ 1.263(e)-1(a)(3)	1545-0123
§ 1.263(e)-1(e)	1545-0123
§ 1.265-1	1545-0074
§ 1.265-2	1545-0123
§ 1.266-1	1545-0123
§ 1.267(f)-1T	1545-0885
§ 1.268-1	1545-0184
§ 1.274-1 through 8	1545-0139
§ 1.274-5 (b) and (c)	1545-0771
§ 1.274-5 (e), (f), and (g)	1545-0771
§ 1.274-5T	1545-0074
§ 1.274-6T	1545-0074
§ 1.280F-3T	1545-0074
§ 1.281-4(b)(2)(v)	1545-0123
§ 1.302-4(b)	1545-0074
§ 1.305-3(d)(2)	1545-0123
§ 1.370-2	1545-0074
§ 1.312-15(d)	1545-0172
§ 1.316-1(b)(5)	1545-0123
§ 1.331-1(d)	1545-0074
§ 1.332-4	1545-0036
§ 1.332-4(a)	1545-0123
§ 1.332-6	1545-0123
§ 1.333-3	1545-0123
§ 1.333-6(a)	1545-0123
§ 1.337-5(d)	1545-0123
§ 1.337-6 (a) and (b)	1545-0123
§ 1.337-6(c) (1), (2), and (3)	1545-0123
§ 1.338-1T through 1.338-3T	1545-0702
§ 1.341-7(b)	1545-0123
§ 1.341-7(c) (1) and (2)	1545-0123
§ 1.341-7(d) (1) and (2)	1545-0123
§ 1.341-7(e)(3)	1545-0123
§ 1.341-7(f) (3) and (4)	1545-0123
§ 1.341-7(j) (1) and (5)	1545-0123
§ 1.351-3 (a), (b), and (c)	1545-0074
§ 1.355-5 (a) and (b)	1545-0123
§ 1.358-5(e)	1545-0123
§ 1.362-2	1545-0123
§ 1.368-3 (a), (b), and (c)	1545-0123
§ 1.371-1(c) (1) and (2)	1545-0123
§ 1.371-2(d) (1) and (2)	1545-0123
§ 1.374-3 (a) and (b)	1545-0123
§ 1.381(b)-1(b) (2) and (3)	1545-0123
§ 1.381(b)-1(c)	1545-0123
§ 1.381(c)(4)-1(a)	1545-0123
§ 1.381(c)(4)-1(b)(1)	1545-0123
§ 1.381(c)(4)-1(b)(2)	1545-0123
§ 1.381(c)(4)-1(b)(3)	1545-0123
§ 1.381(c)(4)-1(d)(2)	1545-0123
§ 1.381(c)(5)-1(b)(1)	1545-0123
§ 1.381(c)(5)-1(b)(2)	1545-0123
§ 1.381(c)(5)-1(b)(3)	1545-0123
§ 1.381(c)(5)-1(d)(2)	1545-0152
§ 1.381(c)(6)-1(a)(2)	1545-0152
§ 1.381(c)(6)-1(c)	1545-0152
§ 1.381(c)(6)-1(e)	1545-0123
§ 1.381(c)(8)-1(a)	1545-0123
§ 1.381(c)(10)-1(b)(2)	1545-0123
§ 1.381(c)(11)-1(k)	1545-0123
§ 1.381(c)(13)-1(c)(2)	1545-0123
§ 1.381(c)(17)-1(c)	1545-0045
§ 1.381(c)(25)-1(c)	1545-0045
§ 1.382-2 (a), (b), (c), and (d)	1545-0123
§ 1.383-1(b)	1545-0074
§ 1.401-1	1545-0710
§ 1.401-1	1545-0020
§ 1.401-1(e)	1545-0197
§ 1.401(f)-1(c)(1)(i)	1545-0710
§ 1.401-12(n) (2) and (3)	1545-0806
§ 1.401-12(n)(6)(iii)(C)	1545-0806
§ 1.401-12(n)(6)(vii)	1545-0806
§ 1.401-12(n)(7)(iv)	1545-0806
§ 1.401-12(n)(8)(iii)	1545-0806
§ 1.401-12(n)(8)(v)(B)	1545-0806
§ 1.401-14(c)(2)	1545-0710
§ 1.401(a)-(11)(c)	1545-0774
§ 1.401(b)-1(e)	1545-0197
§ 1.402(e) -2, -3 and -14	1545-0193
§ 1.404(a)-4(b)	1545-0710
§ 1.404(a)-12(b)(3)	1545-0710
§ 1.408-2(b)(2)(ii)	1545-0390
§ 1.408-2(c) (2), (3), and (4)	1545-0390
§ 1.408-5(a)	1545-0747
§ 1.408-5(b)	1545-0747/ 1545-0710
§ 1.408-5(c)	1545-0710
§ 1.408-5(c)(2)	1545-0662
§ 1.408-5(f)	1545-0710
§ 1.408-6(a)(1)	1545-0390
§ 1.408-6(d)(4)	1545-0390
§ 1.408-7(a)	1545-0119
§ 1.408-7(c)	1545-0119
§ 1.408-7(d)	1545-0119
§ 1.410(a)-2(d)(3)	1545-0710
§ 1.410(d)-1(a)	1545-0710
§ 1.410(d)-1(b)	1545-0710
§ 1.410(d)-1(c)	1545-0710
§ 1.412(b)-5 (b) and (e)	1545-0710
§ 1.412(c)(1)-2(a)(1)	1545-0710
§ 1.412(c)(1)-2(e)	1545-0710
§ 1.412(c)(1)-2(i)	1545-0710
§ 1.412(c)(2)-1 (b) and (e)	1545-0710
§ 1.412(c)(3)-2 (c) and (d)	1545-0710
§ 1.415-2(b)(7)(ii)	1545-0710
§ 1.415-6(e)(iii)	1545-0710
§ 1.441-1(a)	1545-0123
§ 1.441-2(c) (1), (2), and (3)	1545-0123
§ 1.442-1	1545-0134
§ 1.442-1(a) (1) and (2)	1545-0152
§ 1.442-1(b) (1), (2), and (3)	1545-0152
§ 1.442-1(c) (1) and (3)	1545-0123
§ 1.442-1(e)	1545-0074
§ 1.443-1(a)	1545-0123
§ 1.443-1(b)(2) (i) and (v)	1545-0123
§ 1.445-6	1545-0123
§ 1.446-1	1545-0074
§ 1.451-1(a)	1545-0091
§ 1.451-3(a)	1545-0152
§ 1.451-3(f)	1545-0156
§ 1.451-4(e) (1), (2), and (3)	1545-0123
§ 1.451-5(d)	1545-0074
§ 1.451-5(e) (1) and (2)	1545-0074
§ 1.451-6(a) (1) and (2)	1545-0074
§ 1.451-6(b)(1)	1545-0074
§ 1.451-6(b)(2)	1545-0074
§ 1.451-7(a)	1545-0074
§ 1.451-7 (g) and (h)	1545-0074
§ 1.453-1(f)	1545-0152
§ 1.453-2 (c) and (d)	1545-0152
§ 1.453-8(a)	1545-0152
§ 1.453-8(b)	1545-0228
§ 1.453-8(d)	1545-0152
§ 1.454-1(a)	1545-0074
§ 1.455-2(c)	1545-0152
§ 1.455-6 (a), (b), and (c)	1545-0123
§ 1.456-2(c)	1545-0123
§ 1.456-6 (a), (b), and (c)	1545-0123
§ 1.456-7(b)	1545-0123
§ 1.458-10	1545-0152
§ 1.461-1(c)(3) (i) and (ii)	1545-0074
§ 1.461-1(c)(4)	1545-0074
§ 1.461-2	1545-0096
§ 1.461-3	1545-0096
§ 1.461-4 (b) and (c)	1545-0096
§ 1.471-2 (c) and (d)	1545-0123
§ 1.471-5	1545-0123
§ 1.471-6 (h) and (i)	1545-0123
§ 1.471-8(a)	1545-0123
§ 1.471-8(f)	1545-0123
§ 1.471-11(d)(2)	1545-0123
§ 1.472-1(a)	1545-0042
§ 1.472-1(h)	1545-0152
§ 1.472-2(a)	1545-0152
§ 1.472-2(d)	1545-0152
§ 1.472-3	1545-0042
§ 1.472-5	1545-0152
§ 1.472-8(d)	1545-0028
§ 1.472-8(e)(1)	1545-0042
§ 1.472-8(e)(3)(iii)(C)	1545-0042
§ 1.472-8(e)(3)(v)	1545-0042
§ 1.472-8(h)	1545-0042
§ 1.481-4(d)(2)	1545-0152
§ 1.481-5(a)	1545-0152
§ 1.482-2(b)(3)	1545-0123
§ 1.501(a)-1(a)	1545-0056
§ 1.501(a)-1(b)	1545-0057
§ 1.501(c)(3)-1(b)(v)	1545-0056
§ 1.501(c)(9)-5(a)	1545-0047
§ 1.501(c)(17)-3(c)	1545-0047
§ 1.503(c)-1(a)	1545-0052/ 1545-0047
§ 1.507-1(a)(1)	1545-0052
§ 1.507-1(b)	1545-0052
§ 1.507-2(b) (3), (4), (5), and (7)	1545-0052
§ 1.507-2(c)(1)(ii)	1545-0052
§ 1.507-2(c)(2)(i)(b)	1545-0062
§ 1.507-2(c)(2)(ii)(b)	1545-0052
§ 1.507-2(c)(2)(iv)(b)	1545-0052
§ 1.507-2(c)(4)	1545-0052
§ 1.507-2(e)(3)	1545-0052
§ 1.507-2(g)(2)	1545-0052
§ 1.508-1(a)(2)	1545-0052
§ 1.508-1	1545-0056
§ 1.509(a)-3(c)(5)(ii)	1545-0047
§ 1.509(a)-3(f)(1)	1545-0047
§ 1.509-(a)-3(d)(4)(ii)	1545-0047
§ 1.509(a)-5(a)(3)	1545-0047
§ 1.509(c)-1(a)	1545-0052
§ 1.512(a)-4(b)(5)	1545-0047
§ 1.521-1	1545-0058
§ 1.521-1(a)(1)	1545-0051
§ 1.521-1(e)	1545-0058
§ 1.527-2(b)(2)	1545-0129
§ 1.527-6(e)(2)	1545-0129
§ 1.528-8(a)	1545-0127
§ 1.533-2	1545-0123
§ 1.534-2	1545-0123
§ 1.542-3(c)	1545-0123
§ 1.545-2(a)(2)	1545-0123
§ 1.545-2(g)(5)	1545-0123
§ 1.545-2(h)(2)	1545-0123
§ 1.545-3(e)	1545-0123
§ 1.545-3(g)	1545-0123
§ 1.547-2(b)(2)	1545-0123
§ 1.547-3(a)	1545-0123
§ 1.551-4	1545-0074
§ 1.552-3(c)	1545-0099
§ 1.552-4(b)	1545-0099
§ 1.552-5	1545-0099
§ 1.556-2(a)(2)	1545-0704
§ 1.556-2(e)(2)	1545-0704
§ 1.561-2(c)	1545-0123
§ 1.562-3	1545-0123
§ 1.563-2	1545-0123
§ 1.564-1(d)	1545-0123
§ 1.565-1(b)	1545-0123
§ 1.585-1(a)	1545-0123
§ 1.585-3(b)	1545-0123
§ 1.586-2	1545-0123
§ 1.593-1(a)	1545-0123
§ 1.593-6(a)	1545-0123
§ 1.593-6A (a) and (b)	1545-0123
§ 1.593-7(a)	1545-0123
§ 1.595-1(e)	1545-0123
§ 1.611-2(a)	1545-0099
§ 1.611-3(b)	1545-0099
§ 1.611-3(c)	1545-0099
§ 1.611-3(e)	1545-0099
§ 1.611-3(h)	1545-0007
§ 1.612-4(d)	1545-0074
§ 1.612-5(b)	1545-0099
§ 1.612-5(d)	1545-0099

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§ 1.613-3(c)(5)	1545-0099
§ 1.613-3(d)(1)(v)	1545-0099
§ 1.613-3(h)	1545-0099
§ 1.613-4(c)(5)	1545-0099
§ 1.613-4(d)	1545-0099
§ 1.613-4(h)	1545-0099
§ 1.613-6	1545-0099
§ 1.613-7(d)	1545-0099
§ 1.613A-5	1545-0099
§ 1.613A-6 (a), (b), and (c)	1545-0099
§ 1.614-2(d)	1545-0099
§ 1.614-2(e) (2) and (3)	1545-0099
§ 1.614-3(b)	1545-0099
§ 1.614-3(f)	1545-0099
§ 1.614-5(b)	1545-0099
§ 1.614-5(c)	1545-0099
§ 1.614-5(e)	1545-0099
§ 1.614-6(a)	1545-0099
§ 1.614-8(a)(3)	1545-0099
§ 1.617-1(c)	1545-0099
§ 1.617-3(b)	1545-0099
§ 1.617-4(b)	1545-0099
§ 1.631-1(c)	1545-0007
§ 1.631-2(c)	1545-0007
§ 1.641(b)-2(a)	1545-0092
§ 1.642(c)-1(b)(3)	1545-0092
§ 1.642(c)-2(b)	1545-0092
§ 1.642(c)-5	1545-0074
§ 1.642(c)-6	1545-0074
§ 1.642(c)-6	1545-0020
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§ 49.4261-4(c) and (d)	1545-0023
§ 49.4261 (c) (d) and (e)	1545-0023
§ 49.4264(h)-(1) (a), (b), and (c)	1545-0023
§ 49.6011(a)-1	1545-0029
§ 49.6011(a)-2 (a) and (b)	1545-0023
§ 49.6109-1 (a) and (b)	1545-0029
§ 49.6151-1	1545-0257
§ 49.6302(c)-1	1545-0257
§ 51.4988-2(b)	1545-0226
§ 51.4988-2(c)	1545-0222
§ 51.4993-2(a)	1545-0230
§ 51.4993-2 (b) and (c)	1545-0230
§ 51.4993-3	1545-0230
§ 51.4993-4	1545-0230
§ 51.4995-1(c)(ii)	1545-0230
§ 51.4995-2 (a) and (b)	1545-0230
§ 51.4995-2(b)(2)	1545-0615
§ 51.4995-2 (c), (d), (e), and (f)	1545-0230
§ 51.4995-3(e)	1545-0023
§ 51.4995-3(g)(2)(iii)	1545-0023
§ 51.4995-3	1545-0257
§ 51.4995-4(b)	1545-0023/ 1545-0230
§ 51.4995-5 (c), (d), and (e)	1545-0230
§ 51.4997-1(a) (1) and (2)	1545-0222
§ 51.4997-2	1545-0222
§ 51.4997-2(a)	1545-0230
§ 51.6402-1 (a), (b), and (c)	1545-0226
§ 51.52.6011(a)-1	1545-0023
§ 52.6302(c)-1	1545-0257
§ 53.4940-1	1545-0052
§ 53.4942(a)-1	1545-0052
§ 53.4942(a)-2(c)	1545-0052
§ 53.4942(a)-3(a)	1545-0052
§ 53.4942(a)-3 (b)(3) and (b)(4)	1545-0052
§ 53.4942(a)-3(b) (7) and (8)	1545-0792
§ 53.4942(a)-3(c)	1545-0052
§ 53.4942(a)-3(d)	1545-0052
§ 53.4942 (b)-3 (c) and (d)	1545-0052
§ 53.4945-1	1545-0052
§ 53.4945-4(a)	1545-0052
§ 53.4945-4(c) (1), (2), and (3)	1545-0052
§ 53.4945-4(c)(5)	1545-0052
§ 53.4945-5(a)	1545-0052
§ 53.4945-5(c)	1545-0052
§ 53.4945-5(d)	1545-0052
§ 53.4945-6	1545-0052
§ 53.4947-1(c)(4)	1545-0196
§ 53.4948-1(a)	1545-0052
§ 53.4948-1(c)	1545-0052
§ 53.4972-1(a)	1545-0575
§ 53.6001-1	1545-0052
§ 53.6011-1	1545-0196
§ 53.6065-1	1545-0052
§ 53.6071-1	1545-0049
§ 53.6081-1	1545-0148

26 CFR part or section where identified and described	Current OMB control number
§ 54.4972-1(a)	1545-0197
§ 54.4975-7	1545-0710
§ 54.4977-1T	1545-0907
§ 54.6011-1 (a) and (b)	1545-0575
§ 55.6001-1	1545-0123
§ 57.6011(a)-1(a)	1545-0023
§ 57.6011(a)-1(b)	1545-0023
§ 57.6011(a)-2 (a) and (b)	1545-0023
§ 57.6302(c)-1 (a) and (b)	1545-0023
§ 138.1-2 (a)(4) and (c)(4)	1545-0023
§ 138.1-6	1545-0242
§ 138.4064-1	1545-0242
§ 142.1-1 (g) and (i)	1545-0023
§ 142.2-2(c)(3)	1545-0023
§ 145.1-1 through 145.1-7	1545-0745
§ 145.1-7	1545-0804
§ 145.2-1 through 145.6	1545-0744
§ 145.4-1	1545-0023/ 0804
§ 145.4-2 through 145.4-6	1545-0804
§ 145.4051-1	1545-0745
§ 145.4052-1	1545-0745
§ 145.4061-1	1545-0745
§ 148.1-3(e)(3)	1545-0014
§ 148.1-3(i)(2)	1545-0014
§ 148.1-4 (c)(2); (e)(2), (e)(3), (f)(2)	1545-0023
§ 150.4989-1(c)	1545-0230
§ 150.4993-1(b)	1545-0230
§ 150.4995-2 (b)(1) and (c)	1545-0230
§ 150.4996-1(g)	1545-0023
§ 150.4997-1 (a) and (b)	1545-0222
§ 150.4997-2	1545-0224
§ 151.4997-2 (a), (b), (c), (d), and (e)	1545-0222
§ 150.6050C-1	1545-0222
§ 150.6076-1	1545-0222
§ 150.6232(c)-1 through 150.6232(c)-5	1545-0224
§ 150.6402-1	1545-0226
§ 154.1-1(a)(2)	1545-0014
§ 154.1-1(b)	1545-0014
§ 154.1-1(d)	1545-0014
§ 154.2-1	1545-0257
§ 154.2-1(d)	1545-0685
§ 154.3-1(f)	1545-0023
301.6017-1	1545-0090
§ 301.6035-1(a) (1), (2) and (3)	1545-0123
§ 301.6057-1(a) (1) and (4)	1545-0710
§ 301.6057-1(b)(2)	1545-0710
§ 301.6057-1(d)	1545-0710
§ 301.6057-1(e)	1545-0710
§ 301.6057-2(b)	1545-0710
§ 301.6058-1(a)	1545-0710
§ 301.6058-1(c)(4)	1545-0710
§ 301.6059-1 (a), (b), (c), and (d)	1545-0710
§ 301.6104(a)-5(1)	1545-0056
§ 301.6104(a)-6(b)(1)	1545-0056
§ 301.6109-1	1545-0154/ 1545-0003
§ 301.6110-3	1545-0074
§ 301.6110-5(d)	1545-0074
§ 301.6111-1T	1545-0865
§ 301.6112-1T	1545-0865
§ 301.6316-4 (a) and (b)	1545-0074
§ 301.6316-5	1545-0074
§ 301.6316-6(a)	1545-0074
§ 301.6316-7(b)	1545-0029
§ 301.6316-7(c)	1545-0029
§ 301.6324A-1 (a) and (b)	1545-0015
§ 301.6324A-1(d)	1545-0015
§ 301.6324(A)-1(g)	1545-0015
§ 301.6361-1(b)	1545-0074
§ 301.6361-1(c)	1545-0074
§ 301.6361-3	1545-0074
§ 301.6402-2 and 301.6402-3	1545-0073
§ 301.6402-3	1545-0091
§ 301.6402-3(a)(3)	1545-0132
§ 301.6404-1(c)	1545-0024
§ 301.6405-1	1545-0024
§ 301.6501 (b) and (c)	1545-0074
§ 301.6501(d)-1(b)	1545-0074
§ 301.6501(d)-1(c)	1545-0074
§ 301.6511(a)-1(a)	1545-0082
§ 301.6511(a)-1(b)	1545-0082
§ 301.6511(d)-1	1545-0082
§ 301.6511(d)-2	1545-0082
§ 301.6511(d)-3	1545-0082
§ 301.6511(d)-4	1545-0082
§ 301.6511(d)-7	1545-0082
§ 301.6511-7 (a) and (b)	1545-0582
§ 301.6656-1(b)	1545-0794
§ 301.6656-2(c)	1545-0794
§ 301.6707-1T	1545-0865
§ 301.6709-1T	1545-0865

26 CFR part or section where identified and described	Current OMB control number
§ 301.6903–1(b)	1545–0013
§ 301.6905–1(a)	1545–0074
§ 301.7001–1(c)	1545–0123
§ 301.7001–1(f)	1545–0123
§ 301.7011–1(b)	1545–0123
§ 301.716–2(1)	1545–0074
§ 301.7507–(b)	1545–0123
§ 301.7507–8	1545–0123
§ 301.7507–9(e)	1545–0123
§ 301.7517–1(a)	1545–0015
§ 301.7605–1	1545–0795
§ 301.7623–1	1545–0409
§ 301.7654–1	1545–0803
§ 301.7701–16	1545–0795
§ 301.9001–1	1545–0220
§ 302.1–7(b)	1545–0024
§ 304.6402–1 (a) and (c)	1545–0822
§ 305.7701–1	1545–0823
§ 305.7871–1	1545–0823
§ 404.6048–1(a)	1545–0160
§ 404.6048–1(c)	1545–0160
§ 404.6048–1(d)	1545–0160
§ 420.0–1(c)	1545–0710
Part 501	1545–0839
Part 502	1545–0844
Part 503	1545–0837
Part 504	1545–0843
Part 505	1545–0831
Part 506	1545–0838
Part 507	1545–0842
Part 509	1545–0846
Part 510	1545–0836
Part 511	1545–0840
Part 512	1545–0835
Part 513	1545–0834
Part 514	1545–0845
Part 516	1545–0841
Part 517	1545–0849
Part 518	1545–0847
Part 519	1545–0832
Part 520	1545–0833
Part 521	1545–0848

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

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: February 25, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–6015 Filed 3–13–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 84–12]

Drawbridge Operation Regulations; Duwamish Waterway, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the highway drawbridge across the Duwamish West Waterway at Southwest Spokane Street and the highway drawbridge across the Duwamish Waterway at First Avenue South, both in Seattle, Washington, by decreasing the three hour morning and evening closed periods by one hour each and providing exemptions to the closed periods for certain classes of vessels. This change provides that, subject to certain exceptions, the draws of these bridges need not open for the passage of vessels between the hours of 6:30 a.m. and 8:30 a.m. and between 3:45 p.m. and 5:45 p.m., Monday through Friday, except for federal holidays. The draws of the Southwest Spokane Street bridge will open at any time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons and over for towing. The draws of the First Avenue South bridge will open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel; of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing. This change is being made because the opening to traffic of all lanes of the new West Seattle Freeway bridge provides an alternate route for uninterrupted vehicular traffic between West Seattle and destinations across the Duwamish Waterway to the east. This action will accommodate the needs of vehicular traffic and reduce the burden of lengthy closed periods on marine traffic.

EFFECTIVE DATE: These regulations become effective on April 15, 1985.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: On December 7, 1984, the Coast Guard published proposed rules (49 FR 47872) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated December 20, 1984. In each notice interested persons were given until January 22, 1985 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Comments

Four responses were received in response to the **Federal Register** and Guard Public Notice. Two respondents, one federal and one local governmental agency, offered no objection to the proposed change. The local port authority, and an association representing waterway users offered comments in support of the proposed change.

Before publishing a notice of proposed rulemaking, the Coast Guard temporarily changed the regulations governing the operation of the Southwest Spokane Street and First Avenue South bridges to conform with the proposed action in order to test the proposal. The temporary regulations are currently in effect. No comments have been received regarding the existing temporary regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the improvement to vehicular traffic flow brought about by the new high level bridge between Seattle and West Seattle, and the fact that the high level bridge provides an alternate, uninterrupted route for vehicular traffic during periods when the other bridges across the waterway may be required to open for the passage of vessels. Based on the foregoing, closed period openings of the Southwest Spokane Street and First Avenue South bridges for the authorized classes of vessels should not have a significant effect on vehicular traffic movement. 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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 Code of Federal Regulations, is amended by revising § 117.1041(a)(1) to read as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(1) The draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of vessels from 6:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, except as follows:

(i) The draws of the Southwest Spokane Street bridge shall open at any

time for a vessel of 1,000 gross tons and over, a vessel towing a vessel of 1,000 gross tons and over, and a vessel proceeding to pick up a vessel of 1,000 gross tons and over for towing.

(ii) The draws of the First Avenue South bridge shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up a vessel of 5,000 gross tons and over for towing.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: March 4, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85-6099 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

[FPMR Temp. Reg. D-69, Supp. 3]

Federal Employee Parking; FPMR Temporary Regulation

AGENCY: Public Buildings Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends to September 30, 1985, the expiration date of FPMR Temporary Regulation D-69. D-69 sets forth revised policies and procedures concerning Federal employee parking. The regulation was developed as part of an effort to review and streamline GSA's property management regulations.

DATES:

Effective date: April 1, 1985.

Expiration date: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: John H. Quigley, Director, Space Management Division (202-566-1875).

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

List of Subjects in 41 CFR Part 101-20

Government property management.

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

PART 101—[AMENDED]

41 CFR Chapter 101 is amended by adding the following temporary regulation to the appendix at the end of Subpart D.

Federal Property Management Regulations, Temporary Regulation D-69, Supplement 3

February 20, 1985.

To: Head of Federal agencies

Subject: Federal Employee Parking

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D-69.

2. *Effective date.* April 1, 1985.

3. *Expiration date.* This supplement expires on September 30, 1985.

4. *Explanation of changes.* The expiration date in paragraph 3 of FPMR Temporary Regulation D-69 is revised to September 30, 1985.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 85-6055 Filed 3-13-85; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6650]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program; New York, et al.

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 fourth 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) 646-2717, 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 fifth 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.

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	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
New York: Clinton	Clinton, town of	361380	Feb. 4, 1985, Emerg	1-24-75
South Dakota: McPherson	Eureka, city of	460173A	do	7-16-76, 8-22-78
California:				
Lake	Clearlake, city of	060714—New	Feb. 7, 1985, Emerg	
Contra Costa	Danville, city of	060707	do	
Oklahoma: Canadian	Piedmont, city of	400027B	Feb. 4, 1985, Emerg.; Feb. 4, 1985, Reg	1-18-77, 2-17-82
New York: Dutchess	Red Hook, town of	361143B	May 19, 1975, Emerg.; Oct. 16, 1984, Reg.; Oct. 16, 1984, Susp.; Feb. 7, 1985, Rein.	10-18-74, 8-6-76
Alabama: Colbert	Sheffield, city of	010048C	Jan. 10, 1974, Emerg.; Dec. 15, 1977, Reg.; Jan. 28, 1985, Withdrawn.	3-22-74, 10-22-76, 12-15-77, 3-18-83
Oklahoma: Canadian	Unincorporated areas	400485	Feb. 11, 1985, Emerg	8-13-82
Texas: Hunt	Celeste, city of	480365A	do	6-21-74, 8-22-75, 5-24-77, 10-31-78
Missouri: Madison	Cobalt, village of	290601	Feb. 12, 1985, Emerg	3-26-76
Michigan: Oakland	White Lake, township of	260479	Feb. 11, 1985, Emerg.; Feb. 11, 1985, Reg	5-27-77, 2-1-85
Idaho: Bannock	Downey, city of	160165B	Feb. 8, 1985, Emerg.; Feb. 8, 1985, Reg	1-9-79, 9-16-81
West Virginia: Mercer	Unincorporated areas	540124B	Dec. 23, 1975, Emerg.; Feb. 1, 1985, Reg.; Feb. 1, 1985, Susp.; Feb. 8, 1985, Rein.	12-13-74, 8-26-77
Kansas: Sedgwick	Bel Aire, city of	200964—New	Feb. 15, 1985, Emerg	
North Carolina: Dare	Kitty Hawk, town of [1]	370439	Feb. 22, 1985, Emerg.; Feb. 22, 1985, Reg	
Missouri: Carroll	Wakenda, town of	290473A	Sept. 10, 1975, Emerg.; Feb. 1, 1985, Reg.; Feb. 1, 1985, Susp.; Feb. 22, 1985, Rein.	10-18-74
Colorado: Weld	Greeley, city of	080184B	Oct. 15, 1974, Emerg.; July 16, 1979, Reg.; July 16, 1979, Susp.; Feb. 28, 1985, Rein.	6-21-74, 1-16-76, 7-16-76
West Virginia: McDowell	Gary, city of	540117B	May 20, 1975, Emerg.; Feb. 1, 1985, Reg.; Feb. 1, 1985, Susp.; Feb. 28, 1985, Rein.	7-19-74, 6-18-76
Region I				
Maine:				
York	Limerick, town of	230194B	Feb. 1, 1985, Suspension Withdrawn	1-10-75, 6-15-79
Do	North Berwick, town of	230197C	do	2-21-75, 10-15-76, 7-6-79
Do	Waterboro, town of	230199C	do	2-21-75, 10-15-76, 8-17-79
Massachusetts: Essex	Lynn, city of	250068B	do	6-28-74, 9-17-79
Region II				
New York: Dutchess	Rhinebeck, village of	361999B	do	1-5-84
Region V				
Illinois: LaSalle and Grundy	Seneca, village of	170407B	do	3-15-74, 6-4-76, 4-22-83
Region VII				
Iowa: Blackhawk	Cedar Falls, city of	190017B	do	4-12-74, 9-12-75
Region I				
Connecticut: New London	Lisbon, town of	090172A	Feb. 15, 1985, Suspension Withdrawn	1-31-75
Rhode Island: Newport	Little Compton, town of	440035D	do	7-19-74, 12-24-76, 8-17-81, 10-1-83
Region II				
New Jersey: Hunterdon	Readington, township of	340514B	do	6-28-74, 7-8-77
Region IV				
North Carolina:				
Onslow	Jacksonville, city of	370176B	do	5-10-74, 5-13-77
Pender	Unincorporated areas	370344B	do	10-29-76, 10-1-83
Tennessee: Knox	Farragut, town of	470387A	do	7-23-71, 7-1-74, 3-18-77

State and county	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Region V				
Illinois: Whiteside	Erie, village of	170689D	do	5-3-74, 1-30-76, 12-19-80
Indiana: Knox	Unincorporated areas	180422C	do	3-10-78, 6-22-79
Wisconsin: Sauk	Loganville, village of	550397B	do	9-6-74, 4-9-76
Region VII				
Kansas: Sedgwick	Colwich, city of	200484	do	9-26-75, 7-11-78
Region IX				
California: Santa Cruz	Santa Cruz, city of	060355B	do	3-8-74, 4-23-76
Region X				
Alaska: Bethel Division	Bethel, city of	020104B	do	6-28-74, 3-16-76

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.
[1]This is a newly incorporated community that was participating in the Regular Program as an unincorporated area of Dare County. The Town has adopted by reference the County's maps for insurance and floodplain management purposes. Dare County's latest effective FIRM date is 10-1-83, Community Number 3753468.

(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: March 8, 1985.

Jeffrey S. Bragg,

Administrator Federal Insurance Administration.

[FR Doc. 85-6062 Filed 3-13-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 90 and 94

[PR Docket No. 84-30, RM-4444; FCC 85-84]

Amendment of the Commission's Rules and Regulations to Reserve Frequencies for Emergency Electrical Alarm Protection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Parts 90 and 94 of the Commission's Rules to include "grandfathering" provisions for existing licensees on frequencies now allocated for exclusive central station alarm use. It also relaxes the frequency tolerance for remote alarm units operating in the 952-960 MHz band and clarifies rule language concerning allowable antenna height. The action is taken in response to a Petition for Reconsideration filed by the Central Committee on Telecommunications of the American Petroleum Institute.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 90

Private Land Mobile Radio Services Radio.

47 CFR Part 95

Radio.

Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of Part 90 of the Commission's Rules and Regulations to Reserve Frequencies for Emergency Electrical Alarm Protection (PR Docket No. 84-30, RM-4444).

Adopted: February 22, 1985.
Released: February 26, 1985.

By the Commission.

1. On September 26, 1984, the Commission adopted a *Report and Order* in the above matter which allocated four offset frequency pairs at 460/465 MHz for exclusive use by central station electrical alarm companies. [1] Previous to this action, these offset frequencies had been available to alarm companies and other eligibles in the Business Radio Service. The four offset frequencies are located between five primary frequencies that were already allocated for the exclusive use of alarm companies. In the *Report and Order*, the Commission found that compatible operations on both the offset and primary channels would allow for more intensive use of the channels in urban areas. The Central Station Electrical Protection Association (CSEPA) was designated coordinator for these channels. Finally, the Commission declined to make available an exclusive allocation at 900 MHz for central station eligibles.

2. Subsequently, the Central Committee on Telecommunications of the American Petroleum Institute (Central Committee) filed a Petition for Reconsideration requesting the Commission to reconsider the *Report and Order* and indicate that existing licensees on the offset channel would be allowed to remain on them indefinitely. [2] The Central Committee expressed concern that the absence of a "grandfathering" provision in the Rules could cause unnecessary confusion in later years as business radio eligibles licensed on the offset frequencies before the effective date of the *Report and Order* seek renewal of their existing authorizations.

3. We agree with the Central Committee that business radio licensees authorized on the four offset frequencies before the reallocation took effect should be allowed to remain on the channels indefinitely. No party in this proceeding has offered arguments to the contrary. Accordingly, we are revising § 90.75(c)(41) of the Rules, as indicated in the Appendix, to include a "grandfathering" provision for licensees authorized on the four offset frequencies before September 26, 1984.

4. We have also re-examined the technical standards for central station alarm operation at 900 MHz. Central station alarm providers are eligible for 900 MHz authorizations on a shared

[1] *Report and Order*, PR Docket No. 84-30, 49 FR 40177, October 15, 1984.

[2] *Petition for Reconsideration*, PR Docket No. 84-30, filed by the Central Committee on Telecommunications of the American Petroleum Institute on November 14, 1984.

basis with other eligibles. Radio alarm equipment utilized in a multiple address system and operating near 956 MHz is subject to a frequency tolerance of .00015%.[3] CSEPA pointed out that the .00015% tolerance for a master control station presented no problem, but that the many remote units that would be used by subscribers could not meet this tolerance and still be manufactured economically. Remote units would operate at low power levels and since the principal reason for the tighter frequency tolerance was to prevent harmful interference to other systems, low power units could be permitted a relaxed frequency tolerance.

5. Upon reconsideration, we feel that a less stringent tolerance for low powered remote central station alarm units that are part of multiple address systems operating in the 952–960 MHz band would be in the public interest. A lower tolerance would result in lower equipment costs to the user. Accordingly, we are amending our Rules as listed in the Appendix to permit remote units operating at 2 watts or less, installed as part of a multiple address central station system in the 952–960 MHz band, to operate with a frequency tolerance of 0.0005%.[4]

6. CSEPA in their comments on the Petition for Reconsideration,[5] points out an ambiguity in the Rules as amended in the *Report and Order*. They state that although the Commission removed antenna height restrictions on the 460/465 MHz offset frequencies allocated for use by central stations, it did not state clearly that this antenna height relief was limited to central stations.[6][7]

7. It was our intention to remove the 20 foot above ground restriction on the offset frequencies only when they are used by central station licensees. We felt that in the circumstance where there were alarm stations on both the offsets and the primary channels, that a greater antenna height was possible because the confined geographic area and a single coordinating body could control the likelihood of interference. We agree that the rule as amended may be interpreted to allow any station operating on frequencies subject to the limitation of 90.75(c)(27) to exceed the 20 foot antenna height limitation. We are therefore amending 90.267(a)(6)(ii) to clarify the fact that only central station licensees will be permitted antenna heights greater than 20 feet above gound.

8. Accordingly, it is ordered that, effective April 4, 1985, Part 90 of the Commission's Rules is Amended as shown in the Appendix, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. It is further ordered that the Petition for Reconsideration in this proceeding is granted to the extent indicated herein and that this proceeding is terminated.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

47 CFR Parts 90 and 94 are amended to read:

PART 90—[AMENDED]

1. A new 90.75(c)(41) is added to read:

§ 90.75 Business Radio Service.

* * * * *

(c) * * *

(41) Stations authorized on this frequency prior to September 26, 1984 will continue to be authorized as licensed on their existing authorization.

* * * * *

2. § 90.267(a)(6)(ii) is revised to read:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(6) * * *

(ii) Only sea-based stations, and central alarm stations operating on frequencies allocated for central station protection operations, may utilize antennas mounted not more than 7 m. (20 ft.) above the man-made supporting structure, including antenna structures.

* * * * *

3. The table in 90.267(b) entitled "Offset Channels Available in Services Indicated" is amended by revising the limitations on the frequencies 460.9125 and 465.9125 MHz as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

* * * * *

(a) * * *

(b) Frequencies available for assignment under this section are as follows:

Offset Channels Available in Services Indicated

* * * * *

460.8875	IB	
460.9125	IB	Listed Central Station Protection Services.
		Limitations: 90.75(c)(27)(41).
460.9375	IB	Do.
460.9625	IB	Listed Central Station Protection Services.
460.9875	IB	Do.
461.0125	IB	Do.

* * * * *

465.8875	IB	
465.9125	IB	Listed Central Station Protection Services.
		Limitations: 90.75(c)(27)(41).
465.9375	IB	Do.
465.9625	IB	Listed Central Station Protection Services.
465.9875	IB	Do.
466.0125	IB	Do.

* * * * *

PART 94—[AMENDED]

4. In the Table in 94.67(a) the tolerance column for the 952–960 MHz band and footnotes 1 and 5 are revised to read:

§ 94.67 Frequency tolerance.

* * * * *

Frequency band (MHz)	Tolerance as percentage of assigned frequency
928–929	0.0005
952–960	(1)(5)

* * * * *

[1] Transmitters authorized prior to January 1, 1981 at remote sites as part of a central protection alarm system are permitted a tolerance of .002%. Such stations may continue to operate as licensed until January 1, 1991.

* * * * *

[5] For point-to-point systems, with channels greater than or equal to 50 kHz bandwidth, .0005; for multiple address point-to-multipoint systems, regardless of bandwidth, .00015; for remote units in central station alarm systems, .0005.

5. The Table in 94.73(a)(1) is amended by adding footnote 8 and its references as follows:

§ 94.73 Power limitations.

* * * * *

---

[3] 47 CFR 94.67(a).

[4] In a similar matter, the Commission has recently proposed in PR Docket No. 83–1311 that low powered mobile units used for seismic telemetry be allowed to operate with a less stringent frequency tolerance than fixed transmitters in the same frequency range. It stated that 1–5 watt mobile transmitters typically have 20 to 30 dB less power than base stations operating in the same frequency bands, have a smaller transmission duty cycle, and thus have little potential for interference with other operations. See *Notice of Proposed Rule Making*, 49 FR 48950, December 17, 1984.

[5] *Comments*, PR Docket No. 84–30, filed by the Central Station Electrical Protection Association on December 31, 1984.

[6] See § 90.267(a)(6)(ii) and § 90.75(c)(27).

[7] Section 90.75(c)(27) allows use of certain frequencies to be shared in areas of less than 200,000 population by central station alarm and all other Business Radio Service licensees.

Frequency band	Maximum transmit output power (watts)
* * * * *	
* * *	5
952–960MHz	20 [18]

* * * * *

[18] Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

[FR Doc. 85–6051 Filed 3–13–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84–5]

Federal Acquisition Regulation; Correction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule implementing the Competition in Contracting Act of 1984 published in the **Federal Register** on Friday, January 11, 1985 (50 FR 1728).

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–806 published Friday, January 11, 1985, make the following correction:

1. On page 1736, in the second column, in 10.001 the third sentence of the definition of "Standards" is corrected to read as follows:

10.001 Definition.

* * * * *

"Standards" may be used in specifications, invitations for bids, requests for proposals, and contracts.

* * * * *

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: March 8, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–6043 Filed 3–13–85; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1048

[Ex Parte No. MC–37 (Sub-No. 36)]

Houston, TX Commercial Zone

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: In response to a petition by the Port of Galveston seeking redefinition and expansion of the Houston, TX, commercial zone, the Commission instituted this proceeding [noticed at 49 FR 11693, March 26, 1984] inviting comments on a proposed supplement to the commercial zone regulations that would provide that the contraction of municipal boundaries would not disturb established commercial zones. The Commission has adopted the proposed supplement.

EFFECTIVE DATE: The new rule will be effective April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry, (202) 275–7540

or

Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Regulatory Flexibility Analysis

We affirm our preliminary conclusion that adoption of the proposed rule will not have a significant economic impact on a substantial number of small entities. The sole purpose of the rule is to maintain the *status quo* of commercial zones so as to ensure that changes in political boundary lines do not disturb commercial shipping patterns or competitive relationships.

Energy and Environment

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

Adoption of Rule

We adopt the rule set forth in the appendix to this decision. This rule will be codified in the Code of Federal Regulations, Title 49, Part 1048, § 1048.102, as new paragraph (c).

The action in this proceeding is taken pursuant to 49 U.S.C. 10321 and 10526, and 5 U.S.C. 553.

List of Subjects in 49 CFR Part 1048

Motor carriers, Commercial zones.

Decided: March 1, 1985.

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

James H. Bayne,

Secretary.

PART 1048—[AMENDED]

Title 49 of the Code of Federal Regulations, Part 1048, is amended by adding a new paragraph (c) to § 1048.102 to read as follows:

§ 1048.102 Controlling distances and population data.

* * * * *

(c) Contraction of municipal boundaries will not alter the size of commercial zones.

[FR Doc. 85–6111 Filed 3–13–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154–4154]

Tanner Crab off Alaska; Season Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that a fishery closure is necessary to protect Tanner crab stocks in the South Peninsula and Chignik Districts of Registration Area J. The Secretary of Commerce (Secretary) therefore issues this notice closing fishing for Tanner crab in those districts by vessels of the United States. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective 12:00 noon, Alaska Standard Time (AST), March 10, 1985. Public comments on this notice of closure are invited until March 25, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska

Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at: (1) The NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth St., Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, Kodiak Field Office, NMFS), 907–486–3298.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. For the South Peninsula, the preseason desired harvest level was based on historical catch data because adequate survey data were not available; for the Chignik District the level was based on a trawl index survey. The 1985 fishing season for these districts began on January 15. Reasons for the closures in these districts follow:

South Peninsula District. A portion of the South Peninsula District was closed on February 13, 1985 (50 FR 6954, February 19, 1985). Historical catch data indicated that 550,000 pounds of crabs would be available in the remainder of the South Peninsula District open to Tanner crab fishing. Twenty-three vessels have delivered approximately 180,500 pounds of crabs through February 28, 1985. The catch of crabs has declined from an average of about 11 to 4 crabs per pot in this area. Reports of soft shell and molting crabs have been received. The reduced catch indicates that crabs are not available in sufficient numbers to harvest 550,000 pounds. Additional fishing effort on molting crabs which must be discarded will cause additional mortality and wastage of the resource. The remainder of the South Peninsula District therefore will close to Tanner crab fishing at 12:00 noon, AST, on March 10, 1985.

Chignik District. The population estimate of legal-size crabs from a trawl survey indicated an allowable harvest of 400,000 pounds during the 1985 commercial fishing season. Fourteen vessels have landed 256,382 pounds of Tanner crabs from this district since the season opened on January 15, 1985. Initial catch rates of 13 crabs per pot in January have declined to less than 5 crabs per pot in most areas. All productive areas of the district have been fished to some extent. Fishery performance and sample data indicate that the 400,000-pound guideline is excessive. Therefore, the Chignik District will close to Tanner crab fishing at 12:00 noon, AST, on March 10, 1985, at which time approximately 325,000 pounds will have been landed.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. actual conditions of Tanner crab stocks in the above sections are substantially different from conditions anticipated at the beginning of the fishing year; and

2. these differences reasonably support the need to protect those Tanner crab stocks by closing the remainder of the South Peninsula District as defined in § 671.26(f)(1)(ii) and the Chignik District as defined in § 671.26(f)(1)(iii). These districts are therefore closed to all fishing for Tanner crabs from 12:00 noon, AST, March 10, 1985, until 12:00 noon, ADT, May 15, 1985, at which time the closures of these districts prescribed in § 671.26(f)(2) (ii) and (iii) will begin.

This closure is effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above the 15 days immediately following the effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above sections will be subject to damage by overfishing unless these closures take effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of § 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

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

Dated: March 8, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–6024 Filed 3–11–85; 9:32 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 41162–4162]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: An emergency rule is in effect through March 11, 1985, concerning the amount of Pacific halibut caught incidentally in the domestic groundfish fishery being conducted in the Gulf of Alaska. The Secretary of Commerce (Secretary) is extending this rule because of the emergency conditions still exist. The extension is necessary to avoid underutilization of the groundfish resources known to be available and is intended to promote full achievement of the desired harvest level of certain groundfish species.

EFFECTIVE DATES: March 11, 1985, through May 31, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Secretary published an emergency rule in the **Federal Register** (49 FR 48049, December 10, 1984) that increased the incidental catch limits of Pacific halibut to 270 metric tons (mt) and 768 mt in the Western and Central Regulatory Areas of the Gulf of Alaska, respectively. The reasons for these increases and the issues involved are explained in the preamble to that rule. If either of these amounts is taken, the area would be closed to bottom trawling, and domestic trawlers would be restricted to the use of off-bottom gear only. The conditions inducing the initial promulgation of the emergency rule still exist. The Council has expressed its agreement that the

emergency regulations should remain in effect through May, and the Secretary extends the rule in its entirety through May 31, 1985.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that extension of this emergency rule is necessary to respond to an emergency situation and that this extension is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law. It will avoid the adverse consequences in the groundfish fisheries described in the preamble to the original emergency rule.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. The rule was reported to the Director of the Office of Management and Budget.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: March 8, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

For the reasons set out in the preamble, the emergency rule at 49 FR 48049 (December 10, 1984) is effective until May 31, 1985, in its entirety. Accordingly, Part 672 is amended as follows:

1. The authority citation for Part 672 reads as follows:

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

§ 672.20 [Amended]

2. In § 672.20 paragraph (e)(1) continues in suspension and paragraph (e)(3) is extended through May 31, 1985.

[FR Doc. 85-6022 Filed 3-11-85 9:46 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 50
Thursday, March 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

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Carcass Beef and Standards for Grades of Slaughter Cattle

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 8, 1984, the Agricultural Marketing Service (AMS) published a proposal to amend the official U.S. standards for grades of beef carcasses and the related standards for grades of slaughter cattle by eliminating the consideration of kidney, pelvic, and heart (KPH) fat in the determination of yield grade AMS is extending the comment period to May 1, 1985, because an industry organization requested additional time to carefully evaluate the proposed rule and the impact it could have on the industry.

DATE: Comments must be received on or before May 1, 1985.

ADDRESS: Written comments to: Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2649, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4486.

SUPPLEMENTARY INFORMATION: On November 8, 1984, AMS published a proposed rule in the **Federal Register** (49 FR 44724) to amend the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards by eliminating the consideration of KPH fat in the determination of yield grade. The comment period was originally scheduled to end on February 1, 1985. Upon request of an industry trade organization, the original comment period was extended to March 15, 1985, in the January 15, 1985, issue of the **Federal Register** (50 FR 2055). An additional extension of the comment period has been requested by another industry trade organization in order to more carefully evaluate the proposed rule and the impact it could have on the industry. AMS has determined that there is sufficient justification for further extending the comment period until May 1, 1985.

Done at Washington, D.C., on: March 11, 1985.

William T. Manley,

Deputy Administrotor, Marketing Programs.

[FR Doc. 85–6131 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1030

[Docket No. AO–361–A22]

Milk in the Chicago Regional Marketing Area; Decision and Termination of Proceeding on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This decision denies a proposal by dairy farmer cooperative associations to require minimum shipments to pool distributing plants from pool reserve supply plants through February 1985. The decision concludes that fluid milk handlers are obtaining adequate supplies of milk for Class I use without the proposed change. The order accompanying the decision terminates the proceedings in this matter.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued October 11, 1984; published October 15, 1984 (49 FR 40183).

Recommended Decision: Issued December 12, 1984; published December 18, 1984 (49 FR 49099).

Correction to Recommended Decision: Published January 3, 1985 (50 FR 280).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Chicago Regional marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Arlington Heights, Illinois, on October 18 and 19, 1984. Notice of such hearing was issued on October 11, 1984 and published October 15, 1984 (49 FR 40183).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator, on December 12, 1984, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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. In this regard, it is noted that this decision provides for no change in the current provisions of the Chicago Regional order.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

Thirteen paragraphs comprising a discussion of the exceptions received are added at the end of issue No. 1.

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

1. Temporary shipping requirements for reserve supply plants.

2. Whether emergency marketing conditions exist in the Chicago Regional marketing area that warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are

based on evidence presented at the hearing and the record thereof:

1. Temporary Shipping Requirements for Reserve Supply Plants

The order should not be amended to require that reserve supply plants make minimum shipments of milk to pool distributing plants through February 1985. The order now provides that each reserve supply plant must ship to a pool distributing plant one tank truck load (at least 47,000 pounds) of milk anytime during the months of September through December in order to be a pool plant for the month of December. Otherwise, no shipments are required under the order unless the market administrator issues a "call." If a call is issued, reserve supply plants then would have to ship milk to distributing plants to comply with the call, or give up status as a pool plant. Order amendments providing for pool reserve supply plants and the related "call" provisions became effective September 1, 1984.

The order also provides that a handler may elect to pool a supply plant by shipping a specified percentage of the plant's milk receipts to distributing plants each month. In September, the first month that these new provisions were in operation, handlers pooled 104 plants as pool reserve supply plants and only 14 plants as regular supply plants.

Three dairy farmer cooperative associations proposed that the Chicago Regional order be amended to require minimum shipments by reserve supply plants. As proposed, handlers that operate reserve supply plants would have to ship to pool distributing plants five percent of each such reserve supply plant's receipts of Grade A milk, or four tanker loads (minimum of 47,000 pounds each) of milk, whichever was greater, each month through February 1985. Under the cooperatives' proposal, a handler could form a unit comprised of reserve supply plants owned and operated by the handler. Also, the Director of the Dairy Division would be given authority to raise or lower the temporary shipping requirements by up to five percentage points to obtain needed shipments of milk or to avoid unnecessary shipments.

Proponents' Presentation

The proposal to require a minimum shipment from reserve supply plants was submitted by Associated Milk Producers, Inc. (AMPI), Consolidated Badger Cooperative, and Wisconsin Dairies Cooperative. Seven other cooperatives added their support to the proposal. The seven supporting cooperatives are Alto Cooperative Creamery; Lake to Lake, Division of Land O'Lakes, Inc.; Outagamie Producers Cooperative; Manitowoc Milk Producers Cooperative; Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers; and Golden Guernsey Dairy Cooperative. All ten cooperatives are members of the Central Milk Producers Cooperative (CMPC), a group consisting of 14 cooperatives who collectively price milk that they sell to handlers and were jointly represented. Alto, Lake to Lake, Outagamie and Wisconsin Dairies, collectively known as Chicagoland Dairy Sales, Inc., were additionally represented by a second spokesman. Manitowoc, Mid-West Dairymen's and Milwaukee Milk Producers, which together comprise the Lakeshore Federated Dairy Cooperative, also were additionally represented by a second spokesman.

The proposal also was supported by representatives from Dean Foods Company and Hawthorn-Mellody, Inc.

The 12 handlers in total account for 48 of the 144 pool plants on the Chicago Regional milk order, with 33 percent of the order's reserve supply plants, 43 percent of the supply plants, and 31 percent of the distributing plants. The CMPC cooperatives represent 81 percent of the order's producers.

The following paragraphs summarize the testimony offered by witnesses for the above mentioned parties in support of the proposals:

1. The Milk Diversion Program (MDP), which will expire on March 31, 1985, has caused production to decline. The MDP involves 2,446 Order 30 producers. In September 1984, average daily delivery per producer was down 39 pounds (2 percent) under Order 30 from the previous year, and producer milk pooled under Order 30 was down 17.55 million pounds (1.6 percent). This downward movement in production is expected to continue and accelerate due to yet unfilled MDP contracts. However, production is expected to increase as it has traditionally after the end of February. It was noted that over the past six years, production of milk in March has averaged 121.1 million pounds greater than February production.

The cooperatives noted also that a corollary of the MDP has been the increased shipments from areas of surplus to deficit areas. Order 30 handlers' shipments to other Federal order areas in September 1984 amounted to 18,910,895 pounds, 72 percent greater than such shipments a year earlier. It was projected that as production increases in the spring in these other areas, these shipments should no longer be required. Thus, the amendments proposed would be needed only for a temporary period.

2. The bulk of the shipments from reserve supply plants has come from too few handlers, according to proponents, who noted that in September 1984, 69 of the 104 reserve supply plants pooled that month shipped less than five percent of their producer milk receipts to Order 30 distributing plants. Shipments from these 69 reserve supply plants totaled 5,258,837 pounds, or only four percent of the total shipments made by all 104 reserve supply plants to Order 30 distributing plants. These 69 reserve supply plants pooled 45 percent of the total milk pooled that month; yet 41 of the plants did not ship any milk to Order 30 distributing plants.

AMPI pointed out that its facilities pooled 11 percent of the total milk pooled, and shipped 59,743,618 pounds to fluid handlers (48 percent of the total reserve supply plant shipments) during September 1984. These shipments represented more than 49 percent of AMPI's total receipts and over 80 percent of its milk in receiving stations. Reserve supply plants operated by the Chicagoland group shipped at least the supply plant shipping percentage (23 percent) in September and it is anticipated that shipments from its reserve supply plants during the five month period of October through February will be in excess of the supply plant shipping requirement.

The cooperatives that are shipping believe that they cannot meet any additional demands made of them because increased tanker orders from the fluid handlers would force the close-down of some surplus outlets operated by the cooperatives. AMPI, in an effort to make more milk available, ceased operations in September at two manufacturing plants. It was noted that when operations are halted, fixed costs still must be paid.

3. Fluid handlers have not been able to obtain all of the milk they ordered. Due to the decline in producer milk, the cooperatives have not been able to meet the orders of distributing plants. From September 2 through October 13, AMPI said it had not been able to supply an average of 75 loads per week (19 percent of the orders by fluid handlers), totaling approximately 14.1 million pounds per month. Hawthorn-Mellody said that it was not able to obtain all the milk it ordered in September and came up 102 loads short, approximately 4.8 million pounds.

AMPI testified that its inability to fill orders is greatest in the middle of the week. For example, during the first week of September a total of 59 orders were not filled Tuesday through Thursday; yet a total of only ten loads were not filled

on Friday and Saturday. The previous Sunday, all orders were filled. It was pointed out that without tanker shipments to supplement Mid-West Dairymen's regular shipments of producer milk to the Muller-Pinehurst bottling plant, the plant's normal five-day bottling program would be disrupted. Moreover, union wage demands of time-and-a-half at night and double-time on Saturday and Sunday make weekend production cost inefficient.

4. All producers in the entire market share in the higher prices paid for Class I milk use, and to a lesser extent Class II use, through the pooling system; therefore, every plant that these producers ship to should have a minimal obligation to share in the overall supply needs of the market. The proponents pointed out that Class I utilization, and to a lesser extent Class II utilization, add value above the basic Minnesota-Wisconsin price, which when divided by Grade A pounds pooled raises the blend price. Thus, all reserve supply plants share in the pool whether they ship or not. As an example, in September reserve supply plants in Zone 7 drew 21.4 cents per hundredweight from the pool on Class III use to help pay producers. At the same time, Class I use at plants in Zone 7 contributed 79 cents per hundredweight to the total value of the pool.

It was maintained that shipments totaling five percent of each reserve supply plant's producer receipts per month would be sufficient to deal with the shortage. If such a requirement had been in place during September, an additional 18.8 million pounds would have been shipped to distributing plants from those 69 reserve supply plants that shipped less than five percent of their producer receipts.

The proponents stated the view that the minimum level of shipments for any plant should be four loads of not less than 47,000 pounds each. However, they acknowledged that there were 33 reserve supply plants that had total monthly producer milk receipts of 3.76 million pounds or less. Even though four loads would represent more than 5 percent of such a plant's receipts, this was held to be the minimum satisfactory level of shipments.

5. The current call provision is inadequate. The Order 30 call provision in reality applies only to the four distributing plants that have 90 percent or greater Class I utilization. Twenty-two other distributing plants do not meet the 90 percent qualification and thus are excluded from asking for a call when fluid milk is needed. Accordingly, those who favored the proposal maintained that "fluid needs" should include both Class I and Class II needs, because Class I handlers must offer their customers a full line of products. A full product line, in addition to fluid products, would include cottage cheese, yogurt, and sour cream. (There was some contention whether or not ice cream and condensed milk should be included.) It was claimed that all of these products require Grade A milk. Hawthorn-Mellody noted that it has not been able to obtain a sufficient volume for Class II products; and as a result, has lost customers.

Supporters of the proposal pointed out that neighboring markets' supply plant performance standards require Grade A milk to be transferred to pool distributing plants without knowledge of the use made of such milk. Several examples were noted as follows: The Southern Michigan milk order requires shipments of 30 percent of receipts during October through March; The Ohio Valley and Indiana milk orders require shipments of 50 percent during September through February. The Iowa milk order requires shipments of 35 percent during September through November and 20 percent during December through August.

6. Some supporters contended that each plant should have the right to utilize its direct-shipped milk receipts any way it wishes, as long as something is given to the market. Thus, it was their view that Class I operators should be able to use thier direct-shipped milk in any class product, and then require reserve supply plants to ship milk to them. Similarly, Class I handlers should not be required to use all of their Class II milk in Class I before they can expect reserve supply plants to ship milk to the market. This, the view that, as a matter of equity, all of the handlers should actively participate in the pool by either contributing funds for others to share (as in the case of Class I and Class II handlers) or making minimal shipments (as should be required of Class III manufacturers). Thus, no plants would be able to draw the blend price without participating one way or another in supplying the market's fluid needs.

7. Pool handlers maintained that to pay a higher price (relative to current prices) for supplies of milk to meet their Class II needs would put them at a competitive disadvantage with competing nearby markets. They indicated that Class II manufacturers have been competing intensely for milk supplies due to a healthy market for cheese. During the first week of October, it was noted, Commodity Credit Corporation (CCC) purchases decreased 90.1 percent from those made during the corresponding week in 1983. The pool handlers pointed out that, to maintain their milk supplies, operators of cheese facilities have been offering premiums to their producers. In order for fluid handlers to purchase spot or supplemental loads of milk for Class II uses, they have been paying up $1.50 per hundredweight, plus transportation, above the Class II price due to competition for supplies from cheese plants.

8. Sham lease operations should not be allowed to be included in a handler's unit. Legitimate leasing arrangements may be included in units. The proponents believe that units may be formed by handlers who own and operate two or more reserve supply plants. They also held that units may be formed by handlers who lease two or more reserve supply plants provided that the leasee: (1) Is the responsible person who pays producers, (2) has the plant's Board of Health permit to operate in his/her name, and (3) pays the employees who reload the milk or perform duties at the leased facility. They favored formation of units by handlers who both own and operate reserve supply plants and legitimately lease reserve supply plants.

Sham leases would be prohibited from being part of a unit. Proponents described a sham lease as one formed when a regulated handler leases a receiving room from a reserve supply plant at a nominal contractual rate of one dollar per year; and thus, the reserve supply plant becomes part of the handler's unit. The reserve supply plant in such a situation is able to retain most or all of its milk for manufacture without losing its pool plant status. They testified that the regulated handler may request shipments from the plant when needed, and is paid a fee per hundredweight from the manufacturing plant on milk received at the leased facility.

9. The lack of reserve supply plant shipping requirements will lead to chaotic conditions in the market. The proponents stated that without a five percent shipment from all reserve supply plants, distributing plant operators will seek milk from other sources to supplement the shipments from normal supply channels when these shipments are short. Handlers will raid other plants of their producers by offering higher premiums, and thus disrupt existing routes in direct producer procurement, in proponents view.

Opponents' Presentation

The proposal was opposed by the Farmers Union Milk Marketing

Cooperative, the National Farmers Organization (NFO), Marigold Foods, Inc., Kolb-Lena Cheese, Universal Foods, the Trade Association of Proprietary Plants (TAPP), Wisconsin Cheese Makers Association (WCMA), and Kraft, Inc.

Farmers Union is an association of more than 7,100 producers in five Mid-Western states. In September 1984, Farmers Union members supplied 12 percent of the milk marketed under the Chicago Regional milk order.

NFO leases 10 reserve supply plants throughout the Order 30 market.

Marigold Foods owns a distributing plant in Kewaskum, Wisconsin.

Klob-Lena Cheese, located in Lena, Illinois, is a reserve supply plant that manufactures cheese. Its Grade A receipts per month are approximately 1.3 million pounds.

Universal Foods has an association with Cedarburg Dairy, Inc., a supply plant located in Cedarburg, Wisconsin. Both are members of TAPP.

TAPP is a group of operators of 30 plants which mainly manufacture cheese. TAPP also has one bottling plant member. Of the 30 plants, 28 are located in Wisconsin and two in Illinois. Fourteen of the Wisconsin members operate reserve supply plants and one Wisconsin member is a supply plant. The remaining plants are qualified through other supply plants.

WCMA represents 135 Wisconsin plants and eight Illinois plants purported to be affected by adoption of the proposal.

Kraft operates six reserve supply plants fully regulated under the Chicago Regional order.

These groups opposed the proposal on the following bases:

1. It was alleged by opponents to the proposal that there is no urgent need for additional milk for Class I use under Order 30. They pointed to the fact that in September 1984, twenty-three percent of producer milk receipts were used in Class I, which is equal to the Class I percentage of a year earlier; and that in total pounds Class I producer milk has declined 11.3 million pounds from a year earlier.

2. Another issue raised by the opponents was that under the current order provisions, reserve supply plants are only obligated to supply the Class I needs of handlers. Thus, according to the new rules, which were implemented on September 1, 1984, those plants that selected reserve supply status must ship at least one tank truck load (not less than 47,000 pounds) of Grade A fluid milk products to a pool distributing plant during any month of September through December of the same year, and must comply with any announcement by the market administrator calling for a minimum level of shipments which may not exceed twice the Class I utilization percentage for the same month in the previous year.

Therefore, it was stated that shipments made in excess of the order's requirement are made by choice. Cooperatives choose to develop a producer milk supply designated for Class I use, and manufacturing facilities choose to designate their milk for Class III use.

In addition, it was alleged that CMPC payments do not encourage small shipments made on a spot basis. Small shipments, those under five percent of a handler's producer receipts, receive the basic handling charge of 34–50 cents per hundredweight. No additional superpool payments are made on such shipments.

3. A further point made by opponents to the proposal was that all distributing plants were able to obtain enough milk for Class I uses. The witnesses for Marigold Foods, Dean Foods, and Hawthorn-Mellody testified that they were able to adequately supply their customers with Class I products. In addition, no call for Class I was issued. However, it was alleged that if any orders went unfilled, then they were for Class II use, which is not provided for under the Federal order provisions.

4. The opponents stated that requiring shipments for Class II entails a change in policy which up to this point only assured adequate supplies of Grade A milk for Class I purposes. The call provision only applies when Class I supplies are needed. Furthermore, the Class II differential is not high enough for this class of product to be given priority over Class III, as evidenced in September 1984, when the Class II differential was zero. Also, cheese plants are paying up to $2.25 per hundredweight over the Class III price for spot loads of milk, and not want to release their regular supplies only to have to replace them at such a price.

5. One more point made by the opponents was that milk should move because of price incentives, not because of order requirements. It was alleged that forced shipments of milk to meet Class II needs reduces competitive forces. The shipping requirements would force an additional 18.8 million pounds of milk to be shipped (if shipments from reserve supply plants to Order 30 distributing plants approximate those made during September 1984), which must be physically received by distributing plants or the shipping handlers would lose pool plant status. Consequently, it was suggested that the glut of milk will reduce the returns that producers receive relative to what they would receive if prices were allowed to allocate resources.

Furthermore, milk is available for Class II use if handlers are willing to pay the competitive price.

Also pointed out was that with regulatory requirements to move milk, some Class I handlers may receive supplies beyond their needs and sell back those supplies to manufacturers at a profit.

6. Lastly, some opponents to the proposal said the leasing arrangements must be included in units if the proposal is adopted. They alleged that to require each reserve supply plant to ship milk would be a return to inefficient movements of milk. Also, to allow only units consisting of fully owned and operated reserve supply plants would ignore many reserve supply plants not protected by such arrangements and would create market inequities.

Discussion of the Issues

This testimony indicates that under current conditions in this market strong competition exists for milk supplies not needed to meet the demand for Class I (fluid, or bottled) uses. These competing uses are the so-called "soft" products generally associated with bottling plants (Class II milk) and the "hard" products, primarily butter, nonfat dry milk, and cheese (Class III milk), but mostly cheese. Some handlers that produce soft products have ordered tanker loads of milk from certain cooperatives that the cooperatives have not provided. It must be noted here that a supply of milk for such Class II uses will not be required under the call provisions that went into effect on September 1.

The handlers that want the order to require shipments of milk for all the uses that they view as total fluid demand (Class I and most Class II uses) argue that they must provide a full line of ship products in order to service and maintain their fluid milk customer accounts. If the order will not require such supplies to be made available, then those handlers' alternatives include soliciting additional supplies of producer milk, or paying higher prices to entice the milk away from other users of Class II or III milk. Handlers are concerned that if the price that will attract milk gets too high, they will be unable to compete for sales with handlers that make these soft products under other federal orders.

On the other hand, the operators of some pool reserve supply plants (which include many cheese plants) are unwilling to ship milk to distributing plants for Class II uses. They can utilize

the milk in their own operations or in another plant that they supply with milk. Apparently, commercial outlets for cheese plants are currently taking virtually all of the output from such plants. As a result, cheese plant operators are reluctant to give up their milk supplies to other plants for Class II use. In fact, some of the proponents of the proposal under consideration (who operate reserve supply plants) as well as a distributing plant operator supporting the proposal's adoption, control supplies of milk that are either being sold for fluid use in other markets, or used in manufacturing uses.

Some cheese plants have paid prices above the order's minimum Class I price for spot loads of milk. The costs of replacement supplies, keeping customers' orders filled, and maintaining customer accounts are factors involved when cheese plant operators decide whether to make milk available for Class II uses, and the price level at which those supplies will be available. In the short run, some cheese plant operators may not give up any of their milk supplies at any price.

The proponents maintain that pool reserve supply plants have an obligation to ship milk to meet fluid milk handlers' Class II needs, because these handlers' contributions to the pooled value of milk provide the monies that reserve supply plants draw from the pool to help pay their producers a competitive price.

The reserve supply plant operators, on the other hand, claim that their obligation is to supply only the Class I needs of fluid handlers. They contend that these needs are being met, and that if more milk is needed, then the call provision should be used.

There is no evidence in the record of this proceeding that indicates a shortage of milk for Class I needs. The market administrator received one request to initiate a call in September, but the request subsequently was withdrawn. To the extent that handlers' orders for tanker milk have not been filled, it is the Class II uses that have been curtailed, if they have been curtailed. The record shows that some handlers have obtained supplies from other sources when their orders for milk from cooperatives went unfilled. Moreover, a witness for one handler testified that his Class I plant had no real problems in obtaining sufficient milk for Class I uses. Another handler witness indicated that no attempt had been made to obtain milk from other sources after being informed that some of his orders for tanker milk would not be filled.

Data provided in exhibits indicate that Class I use of producer milk in September 1984 was about four percent below a year earlier. Part of this decline was due to the recent closing of two plants and the shift to plants regulated under other federal orders of Class I sales previously distributed from those closed plants. Thus, the demand for Class I milk (based on only one months' data) is down, but increasing seasonally. September's Class I use of producer milk was about 6.8 percent above that for August on a daily average basis. In September 1983, daily average use of Class I producer milk was 9.7 percent above the average for August. In 1982, the August to September change was 10.7 percent. Total Class I producer milk during January through September 1984 was about two percent below the same period of 1983.

Class II use of producer milk, which usually declines seasonally in the fall, averaged 10 percent less on a daily basis in September than in August 1984. However, producer milk assigned to Class II uses during January through September 1984 was about two percent above the same period in 1983.

Meanwhile, total producer milk receipts also declined about 2.5 percent (daily average basis) from August to September. In 1983, producer milk receipts averaged about four percent less in September than in August. During the first nine months of 1984 total producer milk receipts were about one percent less than during the same months in 1983, on a daily average basis.

These data on Class I and II producer milk use and total producer milk receipts indicate that there has not been, so far, any really substantial change in the supply-use relationships in the market. The changes show, for example, a percentage decline in Class I use in September about twice the percentage decline in total producer milk, compared to a year ago. Thus, despite the claims of proponents, there has been no substantial change in the supply-demand picture for milk in this market. Any such changes have been minimal and seasonal changes are about what would normally be expected.

The question in this proceeding is whether the order will require milk to be shipped to distributing plants for Class II uses? The answer, based on this proceeding, must be that such shipments will not be required. The record shows that handlers want and expect cooperatives to supply producer milk for their Class II operations. And, although not documented, testimony at the hearing indicates that some uses of Class II milk in the Chicago order area require the use of Grade A milk. Nevertheless, the order does not currently provide that supply plants or reserve supply plants must ship milk to handlers for Class II use.

There are compelling reasons why the proposed action should not be taken. One of these is that the Class II milk price was not designed to induce dairy farmers to produce milk for Class II uses.[1] Rather, although the Class II price differential reflects some additional value over Class III uses, it nevertheless is fixed at a level intended to help assure that the market is cleared of milk not needed for Class I uses. The Class II differential also was intended to be not so high as to induce handlers to substitute other source milk and dairy products for producer milk in making Class II products. Although the Class II price for some time was fixed at 10 cents per hundredweight above the Class III price for each month, the price difference now can vary from zero to more than 10 cents per hundredweight due to actions taken later to provide a form of advanced notice of Class II prices to handlers.[2] During the period of October 1983 through September 1984, the Class II milk price averaged 12 cents per hundredweight above the Class III milk price.

In contrast, the Class I milk price differential is $1.26 per hundredweight in Zone 1 (Chicago). Again, due to advanced determination of the Class I price, the difference between the Class I price and the Class III price for the given month may not be exactly $1.26. However, for the 12 months from October 1983 through September 1984, the Class I price did average $1.26 per hundredweight above the Class III price. That level of price differential is set for the purpose of achieving a blend price that will assure the market of adequate supplies of milk. The Class I price adds generally about 30 cents per hundredweight to the basic value of the pooled milk. By contrast, the uniform price typically is only about two cents per hundredweight higher due to the higher price for Class II milk.

Moreover, while the order will assure an adequate supply for Class I use, it also provides adjustments to reflect the location value of Class I milk and producer milk in each zone. However, no such adjustments are provided for Class II milk. Thus, the order's pricing

[1] Official notice is taken of the Assistant Secretary's final decision, issued February 19, 1974, on proposed amendments to seven Federal milk marketing orders, including the Chicago Regional order (39 FR 8202).

[2] Official notice is taken of the final order amending 29 Federal orders, including the Chicago Regional order, issued August 25, 1981, by the Assistant Secretary, effective on September 1, 1981 (46 FR 43377).

mechanism does not reflect the cost to handlers for shipping milk to a plant for Class II use. For this reason also, the order should not require the operator of a reserve supply plant to ship milk to bottling plants for Class II use.

There was testimony that competitive problems would result if prices outside the order's pricing mechanism rose high enough to attract milk for Class II uses. However, this argument must carry limited weight on the basis of factual evidence contained in the record. The record is deficient in this regard in two critical areas: (1) The record does not disclose the actual prices being paid by handlers to obtain Class II milk in nearby or adjacent orders; and further, (2) There is no evidence that plant operators in nearby or adjacent markets have the capacity to provide the Class II milk needs of consumers in the Chicago Regional order marketing area. Absent such information, it is not possible to conclude that if handlers must pay a price which reflects the competitive value of Class II milk vs. Class III milk in this market, that it will in fact result in any substantial loss of Class II sales to other orders or unregulated handlers. Even if it did, it could be interpreted that if the Class II needs of the Chicago marketing area can be met with a lower cost supply of milk from elsewhere, then perhaps it should be.

Another point argued was that in other nearby markets, the supply plant pool performance standards require milk to be moved to distributing plants without any consideration of the use made of such milk. While this is a true statement, it nevertheless is not the whole story. Those provisions in the Southern Michigan, Ohio Valley, Indiana, Iowa, and Central Illinois orders require supply plant shipments that are either equal to or less than the basic Class I performance standards that distributing plants must meet to gain pool plant status in those orders. Such provisions should not be interpreted as requiring supply plants to ship milk to distributing plants for Class II use. Nevertheless, such provisions do not provide as direct a tie between Class I needs and supply plant shipping requirements as was indicated for application of the Chicago order's "call" provision.

The cooperatives that requested the hearing also are concerned about equity of performance in supplying the fluid handlers' needs. As noted earlier, AMPI, in September, shipped nearly one half of the supply of milk received at its plants to distributing plants. Others have also shipped substantial percentages of their supplies. At the same time, there were 41 pool reserve supply plants that did not ship any milk to pool distributing plants during September. There were another 28 plants that shipped less than five percent of their receipts. The proponent cooperatives contend that under current supply conditions, any reserve supply plant that has shipped less than five percent of its receipts has not done its fair share to supply the Class I and Class II needs of fluid milk handlers.

Equity of performance with respect to supplying the Class II needs of handlers is not an issue within the current purview of the order. Those cooperatives or other plant operators that agree to ship milk to a bottling plant for Class II uses do so at their own initiative. Presumably, a decision to ship such milk is based on whether or not it is economically feasible to make those shipments. However, the order does not impose any obligation to ship milk for Class II uses.

Moreover, adoption of the proposal could have a negative impact on returns to producers. Requiring more milk to move to distributing plants via a shipping requirement could lessen the ability of cooperatives to obtain over-order prices for the milk so shipped. Also, a shipping requirement could result in a cooperative having to forego the opportunity to produce a profitable manufactured product on a portion of its milk supply, or to be unable to supply milk to another market at a higher price. In either case, the order would not require a higher price for the milk shipped for Class II uses. This is in sharp contrast to the Class I price differential and location adjustment provisions, which are intended to reflect the costs associated with moving milk to the market for Class I uses. It would not be appropriate to change the order as proposed if the end result is to lower returns to producers.

The testimony of the proponents uses the terminology "fluid demand" to mean the milk ordered and used by a fluid handler in a distributing plant. Proponents also seek to define "associated fluid milk products" to mean cottage cheese, ice cream, sour cream, and other cultured products, all of which are Class II uses of milk. Thus, the desired application would be that a distributing plant's "fluid demand" would be comprised of the milk needed for Class I uses plus some of the milk needed for Class II uses. Milk used to produce bulk condensed milk, which is Class II if it is not used in a Class III product, would not be included in the suggested associated fluid milk products category.

The discussion of "fluid demand" and "associated fluid milk products" is essentially irrelevant to the proposals in this proceeding. The order does not recognize these concepts and such a radical change in approach would not seem to be appropriate for a problem for which only a temporary provision is requested. Another problem is that no evidence was presented that would allow a determination of how much additional milk would be needed by distributing plants to cover the uses specified. Also, there is no indication about the quantities of such products made in pool plants vs. nonpool plants. In short, the basic question of whether supply plants whould be required to supply Class II milk to distributors is not resolved by a discussion of what constitutes fluid demand by distributing plants.

The record indicates that the problem of unfilled orders for tanker milk is greater on some days than on other days. If there is any connection between this issue and the need for milk to meet Class I uses, it is probably in this regard. Because bottling plants are unable to obtain all the milk they want on certain days of the week, there has been, and may continue to be for some unspecified period of time, a need for such plants to receive and process milk on days that they would prefer not to operate. Such situations add to costs due to overtime considerations, etc.

There is no assurance that the proposed changes would completely resolve this concern, unless reserve supply plant operators were specifically required by the order to ship milk on certain days. The likelihood that some handlers may have to receive and process milk on days other than their preferred schedule will probably continue so long as the demand for Grade A milk for Class III uses remains as strong as it apparently is at this time.

It should be noted here also that adoption of the proposed shipping requirement (which is a minimal requirement) would not necessarily guarantee that any more milk would actually be shipped to fluid milk plants. Such a requirement would likely result in plants shipping milk that did not do so in September. However, there are two resons why it does not necessarily follow that a minimal shipping requirement will bring forth as much milk as proponents envision.

One reason is that plants that have been shipping more than five percent could choose to ship only the minimum amount required. For example, in September there were 41 reserve supply plants that shipped no milk. Those that

did ship, however, shipped a combined total equal to 21 percent of their total receipts (about 124 million pounds of milk) to pool distributing plants. If each reserve supply plant had shipped only five percent of its receipts, the total shipments to distributing plants would have been only 46 million pounds. At a five percent rate, the plants that shipped less than five percent in September would have shipped about 24 million pounds rather than the 5.2 million pounds that they actually shipped. If a minimum shipping percentage were imposed, and the other plants cut back on their shipments, then the end result could be short of the shipments level the proponents are seeking. Whether such a situation would actually occur is purely a matter of speculation. However, nothing in the order or in the proposed changes would prevent any plant that shipped more than five percent in September from shipping a smaller percentage in the future.

Another possibility is that a reserve supply plant operator would decide to forego pool status for one or more plants. One reserve supply plant operator testified that under the current market situation, the imposition of even a minimal shipping requirement could result in a decision to choose nonpool plant status. The witness indicated that such a move would not jeopardize the plant's ability to keep a Grade A supply of milk sufficient to maintain operation. Obviously, any plant withdrawn from pool status would not have to ship any milk. The record does not reveal how many other plant operators might have the same view.

The fact that reserve supply plant operators may consider dropping out of the pool a viable option to shipping milk demonstrates the dilemma that the market faces. Obviously, if milk shipments are forced, there is more than enough milk produced in the area to supply the Class I and Class II needs of the market. Otherwise, the competitive pressures are so strong that milk will not be moved for Class II uses unless the pricing structure that exists outside the order makes it economically feasible.

It is not possible, on the basis of this proceeding, to amend the order to make it economically feasible for reserve supply plants to ship milk to distributing plants for Class II uses. Therefore, the conclusion is that the proposed shipping requirements should not be adopted.

Statements present at the hearing, and also in briefs, maintained that adoption of the proposal would represent a major policy change and urged that such a decision not be based on an emergency hearing as was held in this proceeding. As has been stated already, the proposal is denied. Therefore no further comment about policy is needed.

Two aspects of the proposal have not yet been addressed. One would have provided the Director of the Dairy Division the authority to temporarily adjust by up to five percentage points the shipping requirments that were proposed. The other feature of the proposal would have allowed a handler to form a unit comprised of pool reserve supply plants owned and operated by the handler, if located in the area specified in defining reserve supply plants. Since the proposal to require minimal shipments by reserve supply plants is denied herein, there is no need to give further consideration to these related provisions of the proposals.

Discussion of Exceptions

Dean Foods Company took exception to the finding in the recommended decision that there is no shortage of milk for Class I needs in the Chicago milk marketing area. The exception concedes that the facts in the record corroborate this finding when considered on a monthly basis according to the definitions and guidelines set forth in the preceding decision to amend the order. However, the exception notes that fluid customers demand milk on specific days according to daily requirements, which may be for fluid milk or cream products. Consequently, according to the exception, on specific days the fluid handlers may be short of milk for Class I use because some of their milk supplies are committed to Class II products.

The issue addressed in the proceeding concerned mandatory shipments for Class I usage. The fact that Dean's exception conceded that there were sufficient receipts of milk at distributing plants to meet Class I needs confirms rather than diminishes the Department's finding in the recommended decision. Accordingly, the exception is denied.

Dean also took exception to the Department's finding that there has not been any really substantial change in the supply-use relationship in the market. The exception agreed that the volume of milk has not changed since last year; however, the exception argues that the sources of milk for Class I and II uses have changed, causing the price for milk supplies to increase. The exception further claims that due to the competition from outside milk in the Chicago marketing area, all increased milk costs have been absorbed by the the fluid handlers.

The order provisions implemented on September 1, 1984, eliminated mandatory shipments from supply plants qualifying for reserve supply plant status so that market inefficiencies could be eliminated. Thus, it is not surprising that there have been some changes in the sources of milk for fluid handlers. The recommended decision was merely noting that Class I use still represents about the same percentage of producer milk supplies as before the changes effective September 1, 1984. Currently, only if the Class I needs are unfilled will action be taken to obtain additional shipments of milk. Shipments for Class II needs are not included and should not be included for the reasons spelled out in the recommended decision. In connection with the issue of outside competition, this also was addressed in the recommended decision. Therefore, the exception is denied.

Dean also took exception to the finding that there was a lack of evidence concerning the price being paid by handlers to obtain Class II milk in the surrounding milk marketing areas, and in essence turning the whole record of the hearing to the Class II issue and not to the issue of supplying the market. Dean suggested that the Secretary check with market administrator offices for the needed information. Dean's exception included November 1984 data on Class II over-order charges to support its position. Such data cannot be accepted at this stage of the proceeding. Further, it must be noted that the proponent(s), not the Secretary, bears the burden of proof at the time of the hearing. Accordingly, the exception is denied.

Another Dean exception was to the finding that the shipping percentages in other Federal orders are less than or equal to the performance standards for pool distributing plants. Dean maintained that any shipment made in other orders, no matter how the milk was ultimately used, was a qualifying shipment. Dean added that the shipping percentage proposed would call for minimal amounts to be shipped so that all could qualify. Dean's exception raises no points that were not already considered in reaching the conclusions on this issue. Consequently, the exception is denied.

Dean also took exception to the finding that equity of performance may not be within the current purview of the order. The exception argued that equity became an issue when the Secretary removed the shipping requirement for (reserve) supply plants. Dean's exception maintained that equity is nonexistent when one group of plants provides a majority of the market with milk while all plants draw from the pool on an equal basis. Again, the exception alludes to the issue of Class II shipments. Also, an exception filed by

Central Milk Producers Cooperative (CMPC) expressed concern that the recommended decision had treated the question of equity too lightly.

As the recommended decision explained, the hearing in this proceeding was called on short notice on the basis that an emergency situation existed with regard to obtaining adequate supplies of milk for fluid handlers. A temporary shipping requirement was proposed, although the Dean Foods representative did propose at the hearing that the shipping requirement should be a permanent change. As noted in the recommended decision, major changes in the order had been in effect less than two months when this proceeding was initiated. The preceding action did deal extensively with the questions of equity and efficiency. The market had hardly had time to adjust to the new pooling provisions for supply plants. If there is a need, and there may be, to further consider the equity of performance/efficiency/pool benefits relationship, it will have to be considered in another proceeding. Accordingly, these exceptions are denied.

The Dean exception also alleged that the Secretary is involved in preserving superpool premium prices. The exception stated that since the removal of provisions requiring shipments from supply plants pooled under the Chicago milk order, the only factor moving milk has been the superpool. Dean concluded that if the superpool moves milk, then a milk order may not be necessary.

The current order provides for the movement of milk for Class I purposes if a need arises. Any shipping requirements imposed at this time would force milk from Class III uses to Class II uses at no advantage to producers for the reasons already stated in the recommended decision. This matter was thoroughly reviewed in the recommended decision. Consequently, the exception is denied.

Another exception by Dean was to the Department's finding that shipping requirements would not solve the basic problem of fluid handlers, which is receiving an adequate supply of Grade A milk on the specific days it is needed in order to coincide with consumer and union demands. Dean holds the view that if each supply plant and reserve supply plant had a minimum shipping requirement, then sufficient milk would be available each day of the week. As stated in the recommended decision, requiring minimal shipments from all reserve supply plants without stipulating the day of shipment would not necessarily assure delivery of milk on the days it was needed, and would not assure that adequate volumes would be shipped. The exception provides no basis to change this conclusion and is therefore, denied.

Finally, Dean took exception to the finding that should a shipping requirement be placed back into the order, then some reserve supply plants may forego pool status. Dean stated that those plants that provide the milk to the plants that build the blend price would benefit from such a reduction of non-shippers because the blend would increase. Perhaps. However, as stated in the recommended decision, plants that withdraw from pool status would no longer be required to ship any milk. It cannot be anticipated how many plants would choose such action; and thus, predictions as to how much milk wold move, via the requirement, cannot be made. Accordingly, this exception also is denied.

CMPC took exception to what was perceived as a finding that fluid handlers do not require milk for Class II uses. We think that the recommended decision was misinterpreted in that regard. The record clearly shows (and the recommended decision so stated) that fluid handlers want milk for Class II uses. But recognition of that fact does not command a conslusion that the order should force a supply of milk to move from other non-fluid milk uses to the fluid handlers for Class II uses absent a pricing mechanism in the order that recognizes the costs involved. The Consideration of the issue in the recommended decision is affirmed and the exception is denied.

2. Whether Emergency Marketing Conditions Exist in the Chicago Regional Marketing Area That Warrant the Omission of a Recommended Decision and the Opportunity To File Written Exceptions Thereto

The proponents of the proposals considered at the hearing, and others that testified in favor of the proposals, urged the Secretary to omit a recommnended decision and the opportunity to file written exceptions. This action was needed, they claimed, to facilitate amending the order as quickly as possible so that more milk would be required to move to pool distributing plants.

The recommended decision concluded that the proposed amendments should not be adopted. Accordingly, it was appropriate to afford the opportunity to file written exceptions to the decision.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision. It is noted here that several briefs contained data or other information not adduced on the record at the hearing. As required by 7 CFR 900.9((b), all such information was disregarded in reaching this recommended decision.

Rulings on Exceptions

In arriving at the findings and conclusions, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conslusions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Termination order

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area should be and is hereby terminated.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy Products.

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

Signed at Washington, D.C. on March 7, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–6056 Filed 3–13–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 225 and 277

[Docket Nos. RM80–8–001; RM80–8–002; Rm80–8–003; RM80–8–004; RM80–8–005]

Bona Fide Offers; Right of First Refusal; Request for Additional Comments

Issued: March 11, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Request for Additional Comments.

SUMMARY: The Federal Energy Regulatory Commission is requesting additional comments on issues raised by petitions for rehearing, reconsideation, and clarification of Order No. 95. In that order, the Commission adopted regulations which implement section 315(b) of the Natural Gas Policy Act of 1978. That section requires sellers of certain natural gas, before selling the gas to a third party, to (1) make a bona fide offer to the original purchaser to continue to sell the gas and (2) allow the original purchaser an opportunity to match the offer of a third party. The Commission requests additional comments primarily to obtain the views of interested parties concerning whether and how recent changes in the natural gas market, including the January 1, 1985, price-deregulation of section 102(c) and some section 103(c) gas, should affect the Commission's disposition of the issues raised on rehearing.

The Commission will accept comments on all issues raised by the petitions for rehearing, reconsideration, and clarification of Order No. 95.

DATE: Comments must be received on or before April 15, 1985.

ADDRESS: Comments should be addressed to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should refer to Docket Nos. RM80-8-001 through RM80-8-005. An original and 14 exact copies of all comments should be filed.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8270.

SUPPLMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is requesting additional comments on issues raised by applications to rehear Order No. 95.[1] The final rule adopted by that order implemented section 315(b) of the Natural Gas Policy Act of 1978 (NGPA).[2] That section requires a seller of certain categories of natural gas, for which the existing contract expires, (1) to make a bona fide offer to the original purchaser to continue to sell that gas and, (2) if the bona fide offer is rejected, to extend to the purchaser the right of first refusal of the gas on the basis of a third party offer. The three petitions for rehearing, one petition for reconsideration, and one petition for clarification raise numerous issues concerning Order No. 95. The Commission is requesting additional comments primarily in order to obtain the views of interested parties concerning whether and how recent changes in the natural gas market, including the January 1, 1985, price-deregulation of section 102(c) and some section 103(c) gas, should affect our disposition of the issues raised on rehearing.

II. Background

Section 315(b) of the NGPA modifies the effect of the removal of certain gas from Natural Gas Act (NGA) jurisdiction by NGPA section 601(a)(1)(B). The gas so removed is gas committed or dedicated to interstate commerce on November 8, 1978, which is also (1) high-cost natural gas as defined in NGPA section 107(c)(1)-(4), (2) new natural gas as defined in NGPA section 102(c), or (3) natural gas produced from any new, onshore production well as defined in NGPA section 103(c). Without section 601(a)(1)(B), the seller of such gas would be required to continue to make sales to the original purchaser, even after a contract expires, until the Commission authorized abandonment of service under section 7(b) of the NGA.[3]

Section 315(b), by giving the original purchaser of gas removed from NGA jurisdiction the right to accept a bona fide offer from the seller or to match the terms of a third party offer, provided a substitute form of protection.

In Order No. 95, the Commission established Part 277 of its regulations in order to implement section 315(b). Section 277.205 of Part 277 requires a seller of gas covered by NGPA section 315(b) to make a bona fide offer to the original purchaser for the continued sale of gas.[4] The bona fide offer shall not be make more than 18 months or less than 20 days before the expiration of the subject contract.[5] The purchaser may accept or reject the bona fide offer. If the purchaser accepts the bona fide offer, the seller has no further obligations to the purchaser under section 315(b).

If, however, the purchaser rejects the bona fide offer, § 277.206 requires the seller to extend to the purchaser a right of first refusal of such natural gas before the seller may sell the gas to a third party. The right of first refusal gives the original purchaser the right to match the terms of a third party's offer to purchase the natural gas. The third party offer must be sufficiently firm that a binding contract between the seller and third party will result if the original purchaser rejects the offer.[6] The third party offer also must have been made in an "arms-length transaction," which the final rule defined as excluding transactions between affiliates of family members.[7] The original purchaser may accept the third party offer but determine to receive the gas at the delivery point and under the physical conditions of delivery in its original contract even though the offer contains other terms.[8] However, if the original purchaser in its acceptance alters any terms of the offer other than its delivery terms, he is deemed to have rejected the offer. Once the gas is sold to a third party pursuant to an offer rejected by the original purchaser, the seller has no further obligation under section 315(b) to the original purchaser.

III. Issues on Rehearing

The applications for rehearing, reconsideration and clarification raise a number of issues. Some applicants contend that the final rule misinterpreted section 315(b) as requiring that both a bona fide offer and an opportunity to reject a third party offer be given in all instances. They contend that only a right of first refusal need be given when an existing contract expires. The applicants also contend

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[1] Bona Fide Offers; Right of First Refusal, 45 FR 53,116 (Aug. 11, 1980) (Order No. 95) (codified at 18 CFR 277.201-10).

[2] 15 U.S.C. 3375 (1982).

[3] 15 U.S.C. 717f (1982). *See* Sunray Mid-Continent Oil Co. v. FPC, 364 U.S. 137 (1960). Under the NGA, neither producer nor pipeline may cease deliveries to their respective customers without complying with section 7. California v. Southland Royalty Co., 436 U.S. 519, 527 (1978). The NGA service obligation does not extend, however, to production and gathering activities. Shell Oil Co. v. FERC, 566 F.2d 536 (5th Cir. 1978).

[4] Section 277.203(c) defines bona fide offer, to mean, in part, a "written offer by the seller to the original purchaser which would be legal for such purchaser to accept under the Natural Gas Act . . ." This language is from the NGPA Conference Report. H.R. Rep. No. 1752, 95th Cong., 2d Sess. 111, *reprinted in* 1978 U.S. Code Cong. & Ad. News 8983, 9027. In Order No. 95, the Commission stated that this wording applied to bona fide offers the legal restrictions of § 154.93 of the Commission's NGA rules (18 CFR 154.93 (1984)). That section invalidates indefinite price escalation clauses, such as most favored nation clauses.

[5] If an NGPA well detemination is made less than 45 days before contract expiration, the bona fide offer shall not be made later than 20 days after that determination.

[6] 18 CFR 277.203(e) and 277.206(a) (1984).

[7] 18 CFR 277.203(b) and 277.206(a) (1984).

[8] 18 CFR 277.206(d) (1984).

that the Commission erred in holding that the provisions in the definition of bona fide offer that the offer be legal for such purchaser to accept under the NGA applies to bona fide offers the legal restrictions in § 154.93 of the Commission's NGA rules. The applicants contend that this holding improperly imposes what is effectively NGA regulation on sales of gas which NGPA section 601(a)(1)(B) remove from NGA sales jurisdiction.

The applicants also attack a number of the specific procedural requirements in the regulations adopted by Order No. 95. Some applicants contend that the requirement that a bona fide offer be made not later than 20 days before expiration of the contract or, if an NGPA well determination is made less than 45 days before contract expiration, not later than 20 days after that determination should be eliminated. The applicants argue that the Commission has no statutory authority to impose deadlines on making a bona fide offer. Also, the final rule provided that the seller continue deliveries until the later of contract expiration or rejection of a bona fide offer. In situations when this provision required deliveries to be continued after expiration of the contract, the final rule provides that the deliveries be made under the terms and conditions in effect on the last day of the expired contract.[9] Some applicants contend that this provision unlawfully limits the price payable after expiration of the contract to a price less than the otherwise applicable maximum lawful or deregulated price.

The applicants attack the final rule's provisions concerning third party offers on a number of grounds. Some contend that the final rule requires that the third party offer include too complete an agreement concerning the terms of a contract between the seller and third party and improperly prohibits third party offers from affiliates. Some applicants contend that the final rule improperly provides that a seller is not released from its section 315(b) obligation to give the original purchaser a right of first refusal until the seller has actually sold natural gas to a third party purchaser under terms rejected by the original purchaser. The applicants believe that a seller's obligation should terminate at the time the original purchaser rejects a third party offer. Finally, some applicants contend that the final rule improperly allows the original purchaser to alter the provisions in the third party offer concerning the place and physical conditions of delivery and provides insufficient compensation to the seller when such changes are made. The applicants argue that the provisions for the original purchaser to alter delivery terms unjustifiably abridges the contracting process by overriding the seller's ability to negotiate such non-price terms of the contract as delivery, treating, conditioning, and compression.

One party has filed an application for clarification. It requests that the Commission clarify that the requirements (1) that bona fide offers be made no more than 18 months before expiration of a contract and (2) that the original purchaser may not waive its bona fide offer and right of first refusal rights more than one year before expiration of a contract do not apply to implied contracts. Such contracts, for purposes of Part 277, arise upon expiration of a contract for the sale of gas subject to the NGA. The party also requests that the Commission clarify that a purchaser's exercise of its rights under a "market-out" or similar clause [10] constitutes an expiration or termination of the contract for purposes of triggering the purchaser's rights under section 315(b).

IV. Request for Comment

The Commission has reviewed the issues raised in the petitions for rehearing, reconsideration, and clarification, and it requests comments concerning how recent changes in the natural gas market, including the January 1, 1985, price-deregulation of certain categories of gas, affect those issues. In particular, the Commission seeks comments addressing the following specific issues.

A. Delivery Terms Under an Accepted Third Party Offer (§ 277.206(d))

As previously stated, the final rule provided the original purchaser may alter the delivery terms of a third party offer so as to receive the gas at the delivery point and under the physical conditions of delivery in the original contract even though the offer contains other terms (§ 277.206(d)). If the original purchaser exercises this option, the seller may apply to the Commission for compensation for increased costs incurred under the new contract provided that any maximum lawful price is not exceeded. The Commission believes that these provisions should be re-examined in light of recent developments in the gas market, including the January 1, 1985, deregulation of section 102(c) and some section 103(c) gas. That deregulation, combined with the July 1, 1979, price-deregulation of section 107(c)(1) through (4) gas, means that all gas subject to section 315(b), except certain section 103(c), gas is now price-deregulated.

Allowing the original purchaser to hold the seller to the original delivery conditions may deprive the seller of his right to negotiate such contract terms and therefore may prevent market conditions from fully affecting the transaction. Accordingly, it is arguable that giving the original purchaser the right to alter the delivery terms of a third party offer is inconsistent with deregulation. The Commission seeks comments on this issue. Also, comments may address the question whether, even if § 277.206(d) is inconsistent with deregulation, such inconsistency is justified in order to give the original purchaser a meaningful right of first refusal under section 315(b) of the NGPA.

Deregulation also raises questions concerning the ability of the Commission to provide the seller with compensation for increased costs incurred as a result of the original purchaser's altering the delivery terms of the third party offer. Any compensation that the Commission granted could be viewed as a regulated add-on to a deregulated price. Commenters may address the question whether in a deregulated environment there is any sound economic basis on which to compensate a seller for its increased costs. In Order No. 406 the Commission held that allowances for production-related costs under section 110 of the NGPA are not available for deregulated gas. The Commission stated, "It makes little economic sense to keep one component of the price of gas subject to a ceiling while deregulating another component." [11] Does the Commission's general reasoning in Order No. 406 also apply in the present context? Or are there methods of granting a seller compensation for its increased costs which would avoid the difficulty of essentially giving the seller a regulated add-on to a deregulated price? If so, what are those methods? What increased costs should the seller be permitted to recover, and how should the Commission determine those costs? Is there a generic method to determine

[9] 18 CFR 277.207 (1984).

[10] Under such a clause a purchaser may release the seller from any further obligation to deliver all or a portion of the gas.

[11] Deregulation and Other Pricing Changes on January 1, 1985, under the Natural Gas Policy Act, 49 FR 46874, 46882 (Nov. 29, 1984); 49 FR 50637 (Dec. 31, 1984) (Order denying rehearing in part, granting rehearing in part, denying stay and making technical corrections).

such costs, or must the costs be determined on a case-by-case basis? Commenters may also address the question whether, if there is no appropriate method to grant a seller compensation for its increased costs, it would be equitable to allow the original purchaser to alter delivery terms.

The Commission originally adopted § 277.206(d) in order to remove potential physical obstacles to the original purchaser's acceptance of the third party offer. It stated that the third party offer might contain delivery terms under which the original purchaser could not take the gas. The Commission was concerned that in such circumstances not allowing the original purchaser to alter the delivery terms could render his right of first refusal meaningless. The Commission seeks comments on how serious this problem is in today's market. The Commission understands that, in many cases, the original purchaser is taking the gas under the only delivery terms which are practicable given the physical configuration of the seller's system because the original purchaser's system is already connected to the seller's, often at the wellhead. In such cases the terms of delivery in the third party offer must be the same as those in the original contract, and the original purchaser need not alter those terms in order to accept the third party offer. The Commission seeks information as to how common this situation is. Is this the situation in most instances where third party offers are made pursuant to section 315(b)?

Even in those cases where the original purchaser cannot take the gas directly under the terms of the third party offer, it may be possible for it to negotiate with another party to deliver the gas to it under the necessary conditions. Do such transactions offer a realistic means in most cases of allowing the original purchaser to accept a third party offer even though it cannot physically take the gas directly under the delivery terms of that offer? Finally, given the current surplus in the gas market, would a purchaser be significantly harmed if he were unable to accept a third party offer because of its delivery terms? Is it reasonable to conclude that in today's market the purchaser should be able to obtain any necessary gas elsewhere?

To summarize, the Commission seeks comments concerning (1) whether permitting the original purchaser unilaterally to change delivery terms is consistent with deregulation, (2) whether in a deregulated environment there is a sound economic basis on which to compensate sellers for increased costs resulting from changed delivery terms, and (3) whether as a general matter original purchasers need the right to alter delivery terms in order to have a meaningful right of first refusal.

B. Terms Legal Under the Natural Gas Act

Some applicants contend that the final rule improperly reimposes NGA jurisdiction on gas subject to section 315(b) by its interpretation of certain language in the definition of bona fide offer. Section 277.203(c), using conference report language,[12] defines bona fide offer as an offer to the original purchaser "which would be legal for such purchaser to accept under the Natural Gas Act." Order No. 95 stated that this provision applied to bona fide offers the legal restrictions in § 154.93 of the Commission's NGA rules (§ 154.93), invalidating indefinite price escalation clauses. In 1981, the court in *Pennzoil v. FERC*[13] held that the Commission cannot apply § 154.93 to existing interstate contracts for the sale of committed or dedicated gas subject to NGPA sections 102(c), 103(c), or 107(c)(1)–(4) because section 601(a)(1)(B) removed that gas from NGA jurisdiction. The Commission requests comments as to whether the same principle applies to new contracts covering gas removed from NGA jurisdiction—the contracts governed by the provisions of section 315(b). Also, commenters may discuss the issue whether prohibiting indefinite price escalators in bona fide offers would be inconsistent with the current price-deregulation of section 102(c) and 107(c)(1)(4) and some section 103 gas.

C. Implied Contracts and Voluntary Releases

The December 14, 1984, petition for clarification raises two new issues not raised in the earlier petitions for rehearing and reconsideration. First, the petition requests that the Commission clarify that a purchaser's exercise of its rights under a "market out" clause should be treated as an expiration of the contract for purposes of triggering the purchaser's rights under section 315(b). The petition states that otherwise a seller could only seek an alternate purchaser for the period between the release and final expiration of the contract since at that time the purchaser would be entitled to its rights under section 315(b).

The Commission has tentatively concluded that it cannot state that a purchaser's exercise of its rights under a "market out" clause necessarily constitutes a termination of the contract. In some cases a purchaser may release the seller from its obligation to deliver gas only for a part of the remaining term of the contract and then later recommence taking gas under a contract. In such a case, the purchaser's exercise of its rights under a "market out" clause should not terminate the contract. Nevertheless, it may be possible to satisfy the concern about a seller's ability to find an alternate purchaser for gas when a purchaser exercises a "market out" clause so as to release the seller from his obligation to deliver any gas for the entire remaining term of the contract by treating such an exercise of a "market out" clause as a waiver by the purchaser of its section 315(b) rights.

The purpose of section 315(b) is to provide a mechanism to protect the continued access of the original purchaser to sufficient gas supplies. It may make little economic sense to grant a purchaser a right to receive section 315(b) rights when it has determined it no longer requires the gas in question. The Commission requests comments as to whether this is an appropriate method to deal with the concern raised by the petition for clarification or what other methods there may be for dealing with that concern.

Commenters may also address the petition for clarification's second contention that the requirements (1) that bona fide offers be made no more than eighteen months before expiration of a contract and (2) that the original purchaser may not waive its bona fide offer and right of first refusal rights more than one year before contract expiration do not apply to implied contracts.

D. New Tight Formation Gas and Section 315(b)

Paragraph (1) of section 315(b) provides that that section applies to new natural gas under section 102(c), gas from new onshore, production wells under section 103(c), and high cost gas under section 107(c)(1)–(4) which was committed or dedicated to interstate commerce on November 8, 1978. Paragraph (1) does not make section 315(b) applicable to section 107(c)(5) gas, including new tight formation gas. However, in the Commission's recent rulemaking implementing the January 1, 1985, deregulation of section 102(c) and some section 103 gas (as well as other

[12] H.R. Rep. No. 1752, 95th Cong., 2d Sess. 111, *reprinted in* 1978 U.S. Cod. Cong. & Ad. News 8983, 9027.

[13] 645 F. 2d 360, 381 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

types of gas),[14] the Commission observed that a determination that gas is new tight formation gas includes gas which qualifies either as section 102 or section 103(c) gas. This is because in order to qualify as new tight formation gas a producer must file the same information, in addition to other information, that would be filed to qualify as section 102 or section 103(c) gas.[15]

The Commission concluded that in order to qualify as new tight formation gas under section 107(c)(5), the gas must meet section 102 or section 103 qualification requirements as a threshold to obtaining a section 107(c)(5) determination. This meant that new tight formation gas was price-deregulated since the applications for determination of such gas as new tight formation gas contained the data and met the requirements for section 102(c) or the appropriate section 103 gas. The Commission seeks comment as to whether the same principle should apply in the context of section 315(b) so that when applications for determinations that gas is new tight formation gas contain the data and meet the requirements for section 102(c) or 103(c), that gas should be considered section 102(c) or 103(c) gas for purposes of section 315(b).

While the primary thrust of this notice for additional comments is to request comments on the four topics discussed above, the Commission is willing to consider additional comments on any of the other issues raised by the petitions for rehearing, reconsideration, and clarification.

IV. Comment Procedures

Interested persons are invited to submit written comments, data, views or arguments with respect to the issues raised in this request. Comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426. An original and 14 exact copies should be filed. All comments received on or before April 15, 1985, will be considered by the Commission. Comments should indicate the name, title, mailing address, and telephone number of the persons to whom communications concerning the request may be addressed. Comments should reference Docket Nos. RM80-8-001 through RM80-8-005 on the outside of the envelope and all documents submitted to the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426 during regular business hours.

List of Subjects

18 CFR Part 225

Preservation of records of natural gas companies.

18 CFR Part 277

Continental shelf, Narual gas, Wage and price controls.

(Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order 12009, 3 CFR 142 (1978); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Federal Power Act, 16 U.S.C. 792-828c (1982))

In consideration of the foregoing, the Commission requests additional comments on issues raised by the petitions for rehearing, reconsideration, and clarification of Order No. 95.

By the direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6120 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

[14] Decregulation and other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act, 49 FR 46874 (Nov. 29, 1984) (Order No. 406); 49 FR 50637 (Dec. 31, 1984) (Order denying rehearing in part, granting rehearing in part, denying stay and making technical corrections).

[15] 18 CFR 274.205(e)(1)(i)(A) or (B) and 271.703(b)(2) (1984).

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Regulation To Provide for General and Specific Exemptions for Systems of Records Under the Privacy Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend § 200.4 of its regulations, which implement the Privacy Act, to provide for general and specific exemptions to certain provisions of the Privacy Act, and to exempt a new proposed system of records, RRB-44, Investigation Files, from those requirements of the Privacy Act consistent with the specific exemption provision of the act at 5 U.S.C. 552a(k)(2).

DATE: Comments must be submitted on or before May 13, 1985.

ADDRESS: Send written comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4548 (FTS 387-4548).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board proposes to exempt, under the specific exemption provisions of 5 U.S.C. 552a(k)(2), the following proposed RRB records system: RRB-43, Investigation records, maintained by the Bureau of Audit and Investigation. (See notice of this proposed system of records published elsewhere in this issue of the **Federal Register.**) In addition, the Board proposes to add a paragraph to the same section of its regulations to address the possible future exemption of this proposed system of records (and others) under the general exemption provisions of 5 U.S.C. 552a(j)(2).

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required.

List of Subjects in 20 CFR Part 200:

Railroad retirement, railroad unemployment insurance, Privacy.

PART 200—[AMENDED]

Title 20 CFR, Chapter II, is proposed to be amended by redesignating paragraphs (f) through (n) as paragraphs (h) through (p) and adding new paragraphs (f) and (g) to § 200.4 to read as follows:

§ 200.4 Protection of privacy of records maintained on individuals.

* * * * *

(f) *General exemptions.* No Agency records system or systems as such are exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a(j) except as may be designated by rules promulgated by the Railroad Retirement Board and published in the **Federal Register** as required.

(g) *Specific exemptions*—(1) *Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2).* RRB-43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) *Privacy Act provisions from which exempt.* The system of records described in this paragraph is exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), 4G, H, and I (Agency

Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a.

(3) *Reasons for exemptions.* The system of records described in this section is exempt for one or more of the following reasons:

(i) To prevent the subject of the investigations from frustrating the investigatory process.

(ii) To protect investigatory material complied for law enforcement purposes.

(iii) To fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information.

(iv) To prevent interference with law enforcement proceedings.

* * * * *

Dated: March 8, 1985.

By authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-6097 Filed 3-13-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 97

[DOD Directive 5405.xx]

Release of Official Information in Litigation and Testimony by Department of Defense Personnel as Witnesses

ACTION: Proposed rule.

SUMMARY: This proposed rule established policies, practices, responsibilities and procedures for the release of official DoD information in litigation and for the appearance of and testimony by DoD personnel as witnesses during litigation. This rule is procedural in nature. Although not required to do so, the Department of Defense is voluntarily publishing this matter for public comment.

DATE: Written comments must be received by April 15, 1985.

ADDRESS: Assistant General Counsel for Legal Counsel, Office of the Secretary of Defense, Department of Defense, Room 3E988, The Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen A. Buck, telephone (202) 697-2714.

SUPPLEMENTARY INFORMATION: This rule does not impose a burden under the Paperwork Reproduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Although exempt under section 1.(a)(2) of E.O. 12291, the Department of Defense does not consider this rule to be a major rule under section 1.(b), E.O. 12291.

List of Subjects in 32 CFR Part 97

Courts, Government employees, Law.

Accordingly, 32 CFR is amended by adding a new Part 97 reading as follows:

PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DOD PERSONNEL AS WITNESSES

Sec.

97.1 Purpose.
97.2 Applicability and scope.
97.3 Definitions.
97.4 Policy.
97.5 Responsibilities.
97.6 Procedures.

Authority: 5 U.S.C. 31; 10 U.S.C. 133.

§ 97.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

§ 97.2 Applicability and Scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Department's, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.

(b) This part does not apply to the release of official information or testimony by DoD personnel in the following situations:

(1) before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of DoD Component;

(2) pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission or the Merit Systems Protection Board, or pursuant to a negotiated grievance procedure under a collective bargaining agreement;

(3) in response to requests by Federal government counsel in litigation conducted on behalf of the United States;

(4) as part of the assistance required pursuant to DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976; or,

(5) pursuant to disclosure of information to Federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

(c) This part does not supersede or modify existing laws or DoD programs governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a, nor does this part preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

(d) This part is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(e) This part does not preclude official comment on matters in litigation in appropriate cases.

(f) This part is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

§ 97.3 Definitions.

(a) *Demand.* Subpoena, order, or other demand issued by a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

(b) *DoD Personnel.* U.S. military personnel; Service Academy cadets and midshipmen; and civilian employees and former employees of any Component of the Department of Defense, including nonappropriated fund activity employees; non-U.S. nationals who perform service overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

(c) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administration actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This

term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

(d) *Official Information.* All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

§ 97.4 Policy.

It is DoD policy that official information should generally be made reasonably available for use in federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected form public disclosure.

§ 97.5 Responsibilities.

(a) The *General Counsel, Department of Defense,* shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

(b) The *Heads of DoD Components* shall issue appropriate regulations to implement this part and to identify official information that is involved in litigation.

§ 97.6 Procedures.

(a) *Authority to Act.* (1) In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consultation and coordination with the appropriate Department of Justice litigation attorneys—to determine whether official information many be released in litigation; whether DoD personnel may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate claims of privilege before any tribunal, is permitted.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, the General Counsel, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that General Counsel, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or testimony of DoD personnel, or both; consulting with the Department of Justice; and taking final action on such requests and demands.

(b) *Factors to Consider.* In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereafter referred to as "the disclosure") pursuant to paragraph 97.6(a) of this section, DoD officials should consider the following types of factors:

(1) Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

(2) Whether the disclosure, including release *in camera,* is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

(3) Whether the disclosure would violate a statute, executive order, regulation, or directive;

(4) Whether the disclosure, including release *in camera,* is appropriate or necessary under the relevant substantive law concerning privilege;

(5) Whether the disclosure, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to DoD 5200.1–R, "Information Security Program Regulation," August 1982; unclassified technical data withheld from public release pursuant to DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984; or other matters from unrestricted disclosure; and,

(6) Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the facts surrounding the request or demand.

(c) *Decisions on Litigation Requests and Demands.* (1) Subject to paragraph (c)(5) of this section, DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in paragraph (a) of this section. Oral approval, in exceptional cases, may be granted, but a record of such approval will be made and retained.

(2) If official DoD information is sought, through testimony or othewise, by a litigation request or demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph (c)(5) of this section, DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in paragraph (a) of this section. *See United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951).

(3) Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the appropriate DoD official designated in paragraph (a) of this section for the Component to which the individual contacted is or was last assigned. The responsible DoD official shall immediately notify the Civil Division of the Department of Justice of all such requests and demands and shall, after consultation and coordination with the Department of Justice, determine whether the individual is required to comply with the request or demand. Thereafter, the DoD official shall notify the requestor or the court or other authority of the determination reached.

(4) If, after DoD personnel have received a litigation request or demand and have in turn notified the appropriate DoD official in accordance with paragraph (c)(3) of this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (a) of this section shall furnish the requestor or the court or other authority with a copy of this part and applicable implementing Regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Component concerned.

(5) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph (c)(4) of this section, or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's order or ruling will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(d) *Fees.* Consistent with the guidelines in DoD Instruction 7230.7, "User Charges," June 12, 1979, the appropriate officials designated in subsection 97.6(a) are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under DoD 5400.7–R, "DoD Freedom of Information Act Program," March 24, 1980. Such fees, in amounts calculated to reimburse the government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the request or demand and any information located in response thereto and for related legal work in connection with the request or demand; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

(e) *Expert or Opinion Testimony.* DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph (a) of this section may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such ruling. If the DoD official determines that no further legal review of or challenge to the court's ruling will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1985.

[FR Doc. 85–6124 Filed 3–13–85; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 85–01]

Drawbridge Operation Regulations; Duwamish Waterway at Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the King County Department of Public Works, the Coast Guard is considering a change to regulations governing the Fourteenth (Sixteenth) Avenue South highway bridge across the Duwamish Waterway, mile 3.8, at Seattle, Washington, by changing morning closed period times to conform with changes in peak flows of vehicular traffic. This proposal is being made because peak periods of vehicular traffic have shifted slightly since the original closed periods were established. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (202) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in the light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Proposed Regulations

In 1956, due to increasing vehicular traffic congestion during morning and afternoon peak traffic periods, closed periods were authorized for the Fourteenth (Sixteenth) Avenue South bridge. The regulation provided that the draws need not open for the passage of vessels from 7:00 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., Monday through Friday. The regulation was later changed to also exempt Federal holidays from closed period restrictions. Because of a gradual shift and an increase in the morning peak traffic flow, King County has requested that the morning closed period be extended by one half hour to run from 6:30 a.m. to 8:00 a.m.

The Fourteenth Avenue South bridge is a double bascule span and has four lanes for vehicular traffic. The bridge has an average daily traffic flow of 18,010 vehicles with about 9,190 in the north bound direction and about 8,820 in the south bound direction. Peak traffic flows are greater in the morning in the north bound direction and greater in the afternoon in the south bound direction. Morning north bound peak traffic flows average about 1,700 vehicles per hour and afternoon south bound peak flows average about 1,600 vehicles per hour.

The bridge averages about 5 openings per day for the passage of vessels.

Navigation which requires openings consists of commercial tugs and barges, fishing vessels, and various recreational craft. The proposed extension of the morning closed period by one-half hour should not have any noticeable effect on navigation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. With an average of only five openings a day, the extension of the existing morning closed period by one-half hour is expected to have little or no economic impact on vessels using the waterway. Over a three-month period, only nine openings occurred during the period from 6:30 a.m. to 7:00 a.m., an average of three openings per month. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33 Code of Federal Regulations by revising § 117.1041(a)(2) to read as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(2) The draws of the Fourteenth (Sixteenth) Avenue South highway bridge, mile 3:8, need not be opened for the passage of vessels from 6:30 a.m. to 8:00 a.m. and 3:30 p.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: February 22, 1985.

R. R. Garrett,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District Acting.

FR Doc. 85-6103 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD3 85-04]

Drawbridge Operation Regulations; Raccoon Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is considering a change to the regulation governing the Route 130 Bridge across Raccoon Creek at Bridgeport, New Jersey by permitting restricted operation of the draw between 7 a.m. and 11 p.m. from 30 November to 1 March. This proposal is being made because of the bridge and because the bridge logs show relatively few openings from 7 a.m. to 11 p.m. during 1982 through 1984. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Comments should be submitted to and are available for examination from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the Office of the Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (oan-br), Governors Island, New York 10004, (212) 668-7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed based on comments received.

Drafting Information

The principal persons involved in drafting this proposal are: Luke Dlhopolsky, Project Manager, and Mary Ann Arisman, Project Attorney, Third Coast Guard District Aids to Navigation Branch and Legal Office, respectively.

Discussion of the Proposed Regulations

The Route 130 regulations are being changed to conform with those of the CONRAIL bridge because of the two bridges' close proximity. The CONRAIL drawbridge regulations were recently revised in the **Federal Register** of January 22, 1985 (50 FR 2785). Coast Guard analysis of the Route 130 bridge logs show that there were 0, 4, and 2 openings of the bridge between 7 a.m. and 11 p.m. between 30 November and 1 March in 1982, 1983, and 1984, respectively. These openings were for commercial vessels who came in and left a couple of hours later. Openings for these vessels will be provided if at least four hours advance notice is given.

Since the regulations for the two draw bridges are being made identical, the whole section is being revised to simplify and consolidate the regulations. No substantive change is being proposed for the CONRAIL railroad bridge.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The limited commercial activity during the winter months will be accommodated by the four hours advance notice. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, of the Code of Federal Regulations by revising § 117.741 to read as follows:

§ 117.741 Raccoon Creek.

The draw of the Route 130 highway bridge, mile 1.8 and the CONRAIL

railroad bridge, mile 2.0, both at Bridgeport shall open on signal March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draws shall open on signal if at least four hours notice is given. The draws shall open at all times as soon as possible for passage of a public vessel of the United States.

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: March 1, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Third Coast Guard District.

[FR Doc. 85-6102 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 140, 141, 142, 143, 144, 145, and 146

[CGD 84-098]

Revision of the Regulations on Outer Continental Shelf Activities

Correction

In FR Doc. 85-5503 beginning on page 9290 in the issue of Thursday, March 7, 1985, make the following corrections:

1. On page 9290, in the second column, in the **SUMMARY,** in the ninth line, "numberous" should read "numerous"; also, in the **SUMMARY,** in the thirteenth line, "appl, icable" should read "applicable".

2. On page 9292, in the second column, in paragraph e, in the second line, "named?" should read "manned?"

BILLING CODE 1505-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 220, 227, 228, and 234

[OW-FRL-2796-3]

Ocean Incineration Regulation; Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings.

SUMMARY: EPA is conducting a series of public hearings to facilitate comments on the proposed Ocean Incineration Regulation published on 2/28/85 (50 FR 8222).

DATES: Public hearings will be held on April 18, 23, 25, 30, and May 2. See **SUPPLEMENTARY INFORMATION** below, for a complete listing of dates, times, locations and agenda.

FOR FURTHER INFORMATION CONTACT: Linn D. Speers, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0100.

SUPPLEMENTARY INFORMATION: On February 28, 1985, EPA published the proposed Ocean Incineration Regulation in the **Federal Register** (50 FR 8222). EPA will hold a series of public hearings on the dates listed below to receive public comments on the proposed rule.

Each public hearing will be conducted in accordance with this general agenda:

8:00 a.m.—Registration
9:00-9:30 a.m.—Introduction and Overview of Proposed Ocean Incineration Regulation by EPA
9:30 a.m.-1:00 p.m.—Receipt of public comments
1:00-2:00 p.m.—Lunch
2:00-3:30 p.m.—Receipt of public comments
3:30-3:45 p.m.—Break
3:45-5:00 p.m.—Receipt of public comments
5:00-7:00 p.m.—Break
7:00-7:30 p.m.—Introduction and Overview of Proposed Ocean Incineration Regulation by EPA
7:30 p.m.-adjournment—Receipt of public comments.

Note 1.—All times listed are approximate.

Note 2.—In San Francisco only, the hearing hours will be one-half hour later than shown above; registration will begin at 8:30 a.m.

Copies of the proposed Ocean Incineration Regulation, 50 FR 8222 are available from the person listed above. Supplementary information on the proposed rule may be found in the Incineration-at-Sea public docket located in PIRU Section of the EPA Library at the address listed below: U.S. Environmental Protection Agency, PIRU M 2904, 401 M Street SW., Washington, D.C. 20460.

The purpose of these public hearings is to receive public views and comments on the proposed Ocean Incineration Regulation. EPA officials will present a short overview of the Regulation to facilitate public comment. In addition, other related documents on incineration including the Science Advisory Board's Report on Incineration of Liquid Hazardous Wastes and the Agency's Incineration Study and Research Strategy will be available prior to the hearing to further facilitate public comment on the proposed Regulation. These documents may be cited or referenced in testimony at the public hearing in so far as they relate to the proposed Regulation. However, they will not themselves be the subject of this hearing.

Participants are encouraged to submit formal written statements on the proposed rule to the Hearing Officer. Verbal statements will be limited to five minutes to allow opportunity for everyone to participate. Those persons wishing to make statements at the public hearings should contact the person listed above.

The dates and locations for the public hearings are as follows:

Date: April 18, 1985
Place: Woodrow Wilson Auditorium, Monmouth College, West Long Branch, New Jersey 07764

Date: April 23, 1985
Place: Council Chamber of City Hall, 1300 Perdido, New Orleans, Louisiana 70112

Date: April 25, 1985
Place: Jacob Brown Auditorium, Civic Center, Brownsville, Texas 75270

Date: April 30, 1985
Place: Room 1194 (Auditorium), California State Building, 350 McAllister Street, San Francisco, California 94102

Date: May 2, 1985
Place: Mobile Municipal Auditorium, West Exhibit Hall, 401 Auditorium Drive, P.O. Box 369, Mobile, Alabama 36601.

Dated: March 6, 1985.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 85-6089 Filed 3-13-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The General Services Administration proposes to amend the FIRMR as required to implement the Competition in Contracting Act of 1984 (Pub. L. 98-369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub.L 98-577). Special category procurement provisions for automatic data processing and telecommunications resources contained in the FIRMR, as well as related management provisions, require revision. The intent of the amendment is to implement the purpose of the statutes. Other changes are made in provisions that are effected by statutory implementation actions. The purposes of this notice is to solicit the views of

Federal agencies and the public on this matter.

DATES: Comments are due April 15, 1985.

ADDRESS: Requests for a copy of draft amendment (Project 84.64) should be made by mail or telephone: General Services Administration (KMPP), Washington, DC 20405; telephone (202) 566–0194 or FTS, 566–0194.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Loy, Policy Branch, Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION:

1. The draft amendment will be distributed without receipt of a specific request to the usual contacts in Federal agencies who regularly receive GSA, OIRM regulatory proposals. All other interested parties should make a request to the address listed above. In view of the effective dates in the statutes, responses must be received within 30 days of the date of publication of this notice.

2. FIRMR regulatory implementation of GSA Board of Contract Appeals Rules of Procedure for ADP Protest Resolution (Reference: Sec. 2713 of Pub. L. 98–369) is not included in this action.

3. The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

Authority: (Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c)).

Dated: February 15, 1985.

Fred L. Sims,

Acting Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85–6137 Filed 3–13–85; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6648]

Proposed Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for coment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified based flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Unincorporated areas of Autauga County	
Alabama River:	
Just upstream of Confluence of Mulberry Creek	*131
At eastern county boundary	*161
Autauga Creek:	
At mouth	*159
About 0.7 mile upstream of Illinois Central Gulf Railroad	*278
Bear Creek:	
At mouth	*154
About 3.6 miles upstream of confluence of Hany Branch	*220
Breakfast Creek:	
At mouth	*211
About 75 feet downstream of County Highway 57	*236
Just upstream of County Highway 57	*244
About 250 feet downstream of County Highway 59	*306
About 100 feet upstream of County Highway 59	*318
About 0.6 mile upstream of County Highway 59	*337
Haney Branch:	
At mouth	*159
About 0.8 mile upstream of Farm Road	*211
Molly Branch: At mouth	*149
Noland Creek:	
At mouth	*158
About 1.2 miles upstream of confluence of Rogers Branch	*304
Rogers Branch:	
At mouth	*248
About 0.7 mile upstream of Farm Road	*393
Swift Creek:	
At confluence with Alabama River	*151
About 3.6 miles upstream of State Highway 14	*180
About 3.0 miles downstream of U.S. Highway 82	*232
About 700 feet upstream of Illinois Central Gulf Railroad	*280
White Water Creek:	
At confluence with Swift Creek	*151
About 1.7 miles upstream of State Highway 14	*177
Yellow Water Creek	
At confluence with Swift Creek	*151
About 1.4 miles upstream of State Highway 14	*155
Maps available for inspection at the Autauga County Courthouse, Prattville, Alabama.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to Honorable Jim Corley Probate Judge, Autauga County, Autauga County Courthouse, P.O. Box 488, Prattville, Alabama 36067.	
Town of Autaugaville, Autauga County	
Swift Creek:	
About 800 feet downstream of State Highway 14	*151
About 1.0 mile upstream of State Highway 14	*152
White Water Creek:	
About 900 feet downstream of Dam	*151
About 1,450 feet upstream of State Highway 14	*154
Yellow Water Creek:	
About 1,500 feet downstream of State Highway 14	*151
About 2,000 feet upstream of State Highway 14	*154
Maps available for inspection at City Hall, Autaugaville, Alabama.	
Send comments to Honorable Curtis Jackson, Mayor, Town of Autaugaville, City Hall, P.O. Box 26, Autaugaville, Alabama 36003.	
Unincorporated areas Elmore County	
Alabama River:	
About 6.0 miles downstream of Interstate 65	*162
At confluence of Coosa River	*168
Coosa River:	
At confluence with Alabama River	*168
About 2.0 miles upstream of confluence of Yellow Water Creek	*189
Tallapoosa	
At confluence with Coosa River	*168
About 5.3 miles upstream of confluence of Chubbehatchee Creek	*185
Coosada Creek:	
About 0.51 mile upstream of mouth	*168
About 1.27 miles upstream of Airport Road	*216
Cottonford Creek:	
Just upstream of State Highway 14	*169
About 2.27 miles upstream of County Highway 3	*281
Grandview Branch:	
At mouth	*226
About 1.31 miles upstream of mouth	*304
Mortar Creek:	
At mouth	*168
Just upstream of State Highway 14	*169
Gravel Pit Creek:	
At mouth	*169
About 3.0 miles upstream of mouth	*319
Graveyard Creek:	
About 0.44 mile downstream of East Patton Street	*312
About 1.99 miles upstream of East Patton Street	*414
Jackson Lake Tributary:	
Within county	*167
Still Creek:	
At mouth	*164
About 0.76 mile upstream of Grandview Road	*258
Lewis Creek:	
About 0.79 mile upstream of mouth	*234
About 3.31 miles upstream of mouth	*349
Mill Creek:	
At mouth	*164
About 0.88 mile upstream of Old State Highway 14	*285
Maps available for inspection at the Elmore County Courthouse, Wetumpka, Alabama. Send comments to Honorable Ed Enslen, Probate Judge, Elmore County, Elmore County Courthouse, Wetumpka, Alabama 36092.	
COLORADO	
Carbondale (town) Garfield County	
Crystal River:	
450 feet west from the intersection of Greystone Drive and Crystal Road	*6142
Maps available for inspection at Planning Department, 76 South 2nd Street, Carbondale, Colorado.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to the Honorable Bill Gray, 76 South 2nd Street, Carbondale, Colorado 81623.	
Garfield County (unincorporated areas)	
Colorado River (at Rifle): 750 feet upstream from the center of State Highway 13	*5,304
Colorado River (at New Castle): 1,080 feet upstream from the confluence with Alkali Creek	*5,528
Colorado River (at Glenwood Springs): 80 feet upstream from the center of Access Road M	*5,721
Roaring Fork River:	
630 feet upstream from the confluence with Threemile Creek	*5,793
40 feet upstream from the center of County Road 109	*5,903
80 feet upstream from the center of County Road 100	*6,270
Crystal River:	
At the center of the Freeman S. James Bridge	*6,103
100 feet upstream from the center of Mt. Sopris Ranch Road	*6,227
Cattle Creek: 10 feet upstream from the center of the Denver and Rio Grande Western Railroad	*6,007
Fourmile Creek: 70 feet upstream from the center of Fourmile Road	*6,068
Threemile Creek: 80 feet upstream from the center of Midland Avenue	*5,881
Mitchell Creek: 40 feet upstream from the center of U.S. Highway 6	*5,704
Rifle Creek:	
At the center of County Road 291	*5,468
320 feet upstream from the center of County Road 251	*5,626
Rifle Creek Splitflow: 30 feet upstream from the center of County Road 291	*5,462
Hubbard Gulch: 40 feet upstream from the center of State Highway 13 Bypass	*5,440
Government Creek: 330 feet southeast from the intersection of County Road 242 and State Highway 13	*5,544
Helmer Gulch: 100 feet south of the center of the east bound lane of Interstate Highway 70, approximately 4,000 feet west of its intersection with State Highway 13	#1
Ramsey Gulch: 100 feet south of the center of the eastbound lane of Interstate Highway 70, approximately 2,000 feet east of its intersection with State Highway 13	§1
Alkali Creek: 40 feet upstream from the center of County Road 335	*5,583
Maps available for inspection at the Planning Department, 109 8th Street, Glenwood Springs, Colorado.	
Send comments to the Honorable Robert Richardson, 109 8th Street, Glenwood Springs, Colorado 81601.	
ILLINOIS	
City of Mattoon, Coles County	
Kickapoo Creek:	
About 0.32 mile downstream 6th Street	*702
About 450 feet upstream of Lake Land Boulevard	*711
Maps available for inspection at the City Courts Office, City Hall, 209 North 19th Street, Mattoon, Illinois.	
Send comments to Honorable Rodger W. Delpor, Mayor, City of Mattoon, City Hall, 209 North 19th Street, Mattoon, Illinois 61938.	
KANSAS	
Unincorporated areas of Sedgwick County	
Arkansas River:	
Just upstream of State Highway 53	*1,223
About 0.7 mile upstreamof Washington Street	*1,252
About 1.85 miles downstream of 47th Street South	*1,258
Just downstream of Kansas Turnpike	*1,273
About 2.15 miles downstream of State Highway 96	*1,322

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 0.3 mile upstream of State Highway 96	*1,329
Spring Creek:	
At mouth	*1,235
About 0.6 mile upstream of Woodlawn Avenue	*1,261
Dry Creek:	
Just downstream of Madison Road	*1,266
About 840 feet downstream of Farm Road	*1,287
About 1250 feet upstream of Farm Road	*1,293
Dry Creek Tributary:	
About 1600 feet downstream of Windmill Road	*1,282
Just downstream of Windmill Road	*1,293
Cowskin Creek:	
About 2,000 feet upstream of Pawnee Avenue	*1,308
About 0.53 mile downstream of Maple Street	*1,314
Just downstream of Maple Street	*1,319
Just upstream of Central Avenue	*1,328
Just downstream of 21st Street North	*1,345
About 6,850 feet downstream of State Highway 296	*1,366
About 8,400 feet upstream of State Highway 296	*1,376
Cowskin Creek South:	
About 2,700 feet downstream of 95th Street South	*1,243
Just upstream of Seneca Street	*1,259
Calfskin Creek:	
About 3,400 feet upstream of mouth	*1,316
Just downstream of US Highway 54	*1,322
North Fork Calfskin Creek:	
At mouth	*1,320
About 1.2 miles upstream of confluence of Middle Fork Calfskin Creek	*1,340
Middle Fork Calfskin Creek:	
About 370 feet upstream of mouth	*1,324
About 4,400 feet upstream of mouth	*1,340
Big Slough North:	
Just upstream of 13th Street North	*1,317
Just downstream of 45th Street North	*1,337
Just downstream of 59rd Street North	*1,346
Big Slough South:	
Just upstream of Hydraulic Avenue	*1,264
Just downstream of 55th Street South	*1,267
Little Slough:	
At mouth	*1,332
Just downstream of 53rd Street North	*1,342
Chisholm Creek:	
Just upstream of Interstate 35	*1,350
Just upstream of 77th Street North	*1,370
West Branch Chisholm Creek:	
At mouth	*1,332
About 0.45 mile upstream of 77th Street North	*1,343
West Fork, Chisholm Creek:	
At mouth	*1,357
Just downstream of 77th Street North	*1,363
Middle Branch, Gypsum Creek:	
About 3,150 feet downstream of 13th Street North	*1,350
About 4,050 feet upstream of 13th Street North	*1,364
Fourmile Creek:	
Just downstream of Harry Street	*1,288
Just upstream of Central Avenue	*1,317
About 400 feet upstream of Burlington Northern Railroad	*1,345
West Fork, Fourmile Creek:	
At mouth	*1,321
Just downstream of Burlington Northern Railroad	*1,348
Just upstream of Burlington Northern Railroad	*1,354
About 2,650 feet upstream of Burlington Northern Railroad	*1,355
Brookhaven Creek:	
At mouth	*1,290
Just downstream of Interstate 35	*1,321
Just upstream of Interstate 35	*1,329
Just downstream of 13th Street North	*1,332
Middle Fork, Chisholm Creek:	
About 1.0 mile above mouth	*1,332
Just downstream of State Highway 254	*1,339
Just downstream of State Highway 254 (upstream crossing)	*1,361
East Fork, Chisholm Creek:	
About 550 feet downstream of Woodlawn Avenue	*1,357

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 1,350 feet upstream of Woodlawn Avenue	*1,351
Just upstream of 45th Street North	*1,377
About 1,300 feet upstream of 53rd Street North	*1,403
Gypsum Creek:	
About 1,100 feet downstream of Harry Street	*1,319
Just downstream of Harry Street	*1,320
Center Drain East Tributary:	
About 3,700 feet downstream of 37th Street North	*1,332
About 6,300 feet upstream of Hillside Avenue	*1,373
Spring Branch:	
Just upstream of 159th Street East	*1,290
About 3,000 feet upstream of Greenwich Road	*1,340
Spring Branch Tributary No. 1:	
At mouth	*1,291
Just downstream of Pawnee Avenue	*1,309
Spring Branch Tributary No. 4:	
At mouth	*1,294
About 200 feet downstream of Interstate 35	*1,324
Just upstream of Interstate 35	*1,332
Just downstream of Earth Dam	*1,335
Just upstream of Earth Dam	*1,342
About 1,750 feet upstream of Earth Dam	*1,343
Wichita-Valley Center Floodway:	
Just downstream of Seneca Street	*1,270
About 0.6 mile downstream of Zoo Boulevard	*1,317
About 2.3 miles upstream of Missouri Pacific Railroad	*1,324
Clearwater Tributary 1:	
About 1,300 feet downstream of Tracy Avenue South	*1,262
About 650 feet upstream of Ross Avenue	*1,289
Pleasant Valley Tributary: Within Unincorporated Area	*1,327
West Branch, Gypsum Creek: Within Unincorporated Area	*1,357
Little Arkansas River:	
About 1.0 mile upstream of confluence with Wichita-Valley Center Floodway	*1,325
About 2,700 feet upstream of Hoover Street	*1,364
At upstream County Boundary	*1,374
Shallow Flooding (ponding from rainfall):	
At intersection of Seneca Street and 63rd Street South	*1,265
About 2,600 feet west of intersection of Broadway and 63rd Street South	*1,265
About 1,200 feet south of 63rd Street South, just west of Broadway	*1,265

Maps available for inspection at the Sedgwick County Building, Sedgwick County Public Works Department, Wichita, Kansas.

Send comments to Honorable Jack Spratt, Chairman of the Board of County Supervisors, Sedgwick County Building, 525 North Main, Wichita, Kansas 67203.

MAINE

Boothbay Harbor, town, Lincoln County

Atlantic Ocean (Linekin Bay):	
Shoreline at eastern corporate limits	*14
Shoreline at Wall Point Road (extended)	*12
Shoreline at Spruce Point	*19
(Boothbay Harbor):	
Shoreline approximately 400 feet south of Factory Cove Road (extended)	*26
Shoreline approximately 400 feet southeast of Commercial Street (extended)	*17
(Townsend Gut):	
Shoreline at Juniper Point	*16
Shoreline at western corporate limits	*10
Southwestern shoreline of Isle of Springs	*21
Shallow Flooding: Dunes in the vicinity of Factory Cove Road	#2

Maps available for inspection at the Boothbay Harbor Town Hall, Boothbay Harbor, Maine.

Send comments to Honorable Donald Wooten, Chairman of the Board of Selectmen for the Town of Boothbay Harbor, McKnown Street, Boothbay Harbor, Maine 04538.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
MASSACHUSETTS	
Cohasset, town Norfolk County	
Massachusetts Bay:	
Shoreline at Deep Run (extended)	*26
Entire shoreline of Sandy Cove	*16
At intersection of Nichols Road and Atlantic Avenue	*11
Shallow Flooding: Areas of sheetflow along Massachusetts Bay	#1 & #2
The Gulf:	
Shoreline approximately 400 feet south of River Road (extended)	*8
Western shoreline of Government Island south of Border Street	*11
Straits Pond: Entire shoreline within community	*9
Walnut Hill Stream:	
Approximately 400 feet downstream of Main Street	*8
Approximately 100 feet upstream of Beechwood Street	*32
Rattlesnake Run:	
At confluence with Straits Pond	*9
Approximately 1,350 feet upstream of Jerusalem Road	*25
Turkey Hill Run:	
Downstream corporate limits	*18
Upstream corporate limits	*36
James Brook:	
Upstream side of Smith Place	*11
Approximately 100 feet upstream of abandoned railroad	*20
Lily Pond Stream:	
At confluence with Lily Pond	*45
Approximately 1,055 feet upstream of Tupelo Road	*63
Bound Brook:	
At downstream corporate limits	*32
Approximately 1,600 feet downstream of Beechwood Street	*32
Richardsons Brook: Approximately 1,000 feet upstream of Jerusalem Road	*11

Maps available for inspection at the office of Christine Bassett, Chairman of the Planning Board, Town Hall, Cohasset, Massachusetts.

Send comments to Honorable Clifford Mitman, Chairman of the Board of Selectmen of the Town of Cohasset, Cohasset Town Offices, 41 Highland Avenue, Cohasset, Massachusetts 02025.

Essex, town, Essex County

Atlantic Ocean, affecting Essex Bay:	
Shoreline at east side of Dilly Island	*14
Shoreline at Middle Road near Conomo Point (extended)	*12
Entire shoreline of Bull Island	*10
Shoreline of Castle Neck River at State Route 133	*10
Shoreline of Essex River at State Route 133	*10

Maps available for inspection at the Essex Library and Essex Selectman's Office, Town Hall, Essex, Massachusetts.

Send comments to Honorable Harold Addison, Chairman of the Board of Selectmen for the Town of Essex, Martin Street, Town Hall, Essex, Massachusetts 01929.

MISSOURI

City of Jackson, Cape Girardeau County

Hubble Creek:	
At confluence of Goose Creek	*399
About 1.08 miles upstream of North High Street	*451
Goose Creek:	
At mouth	*399
About 1.85 miles upstream of East Main Street	*476
Rocky Branch:	
Just upstream of County Highway PP	*410
About 140 feet downstream of State Highway 72	*426
About 150 feet upstream of State Highway 72	*433
About 170 feet downstream of Oak Street	*435
Just upstream of Oak Street	*443
About 230 feet downstream of County Highway D	*462
Just upstream of County Highway D	*468
Neal Creek:	
At mouth	*427
About 1,200 feet upstream of Shawnee Avenue	*464

Maps available for inspection at City Hall, 225 South High, Jackson, Missouri.

Send comments to Honorable Carlton G. Meyer, Mayor, City of Jackson, City Hall, 225 South High, Jackson, Missouri 63755.

NEW YORK

Carthage, village, Jefferson County

Black River:	
Downstream corporate limits	*688
Upstream side of Carthage State Dam	*732
Upstream corporate limits	*735

Maps available for inspection at the Village Hall, Carthage, New York.

Send comments to Honorable Warren Kennehan, President of the Village of Carthage, Jefferson County, 120 South Mechanic Street, Carthage, New York 13619.

Goshen, village, Orange County

Rio Grande:	
At downstream corporate limits	*412
Approximately 520 feet upstream of Greenwich Avenue	*433

Maps available for inspection at the Village Hall, Goshen, New York.

Send comments to Honorable Stephen Hopkins, Mayor of the Village of Goshen, Orange County, 276 Main Street, Goshen, New York 10924.

Herrings, village, Jefferson County

Black River:	
Downstream corporate limits	*664
Downstream side of Herrings Dam	*668
Upstream corporate limits	*686

Maps available for inspection at the Village Fire Hall, Herrings, New York.

Send comments to Honorable Leroy Slye, Mayor of the Village of Herrings, Jefferson County, 36 First Street, Herrings, New York 13653.

Norwich, city, Chenango County

Chenango River:	
Confluence of Canasawacta Creek	*992
Approximately 100 feet upstream of Hale Street	*995
Approximately 100 feet upstream of State Route 23	*1002
Approximately 100 feet west of CONRAIL at northern corporate limits	*1006
Canasawacta Creek:	
Confluence with Chenango River	*992
Approximately 50 feet upstream of State Route 12	*996
Upstream side of West Main Street	*1018
Upstream side of Pleasant Street	*1028
Approximately 200 feet downstream of State Route 23	*1037
Most upstream corporate limits	*1045

Maps available for inspection at the City Hall, East Main Street, Norwich, New York.

Send comments to Honorable Casey Jones, Mayor of the City of Norwich, Chenango County, P.O. Box 430, Norwich, New York 13815.

West Carthage, village, Jefferson County

Black River:	
Downstream corporate limits	*689
Upstream side of Carthage State Dam	*732
Upstream corporate limits	*734

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Village Hall, 10 North Jefferson Street, Carthage, New York.	
Send comments to Honorable Gerald Caldwell, Mayor of the Village of West Carthage, Jefferson County, 10 North Jefferson Street, Carthage, New York 13619.	
St. Armand, town, Essex County	
Saranac River:	
Approximately 450 feet downstream of Sewage Disposal Plant Access Road	*1515
Upstream corporate limits	*1522
Maps available for inspection at the Town Hall, Main Street, Bloomingdale, New York.	
Send comments to Honorable Joyce Morency, Town Supervisor of the Town of St. Armand, P.O. Box 227, Bloomingdale, New York 12913.	
NORTH CAROLINA	
Town of Holden Beach, Brunswick County	
Atlantic Ocean:	
Along southern shoreline of Intracoastal Waterway from Boyd Street to Halstead Street	*13
Along shoreline from western corporate limits to Scotch Bonnet Drive	*20
Maps available for inspection at the Town Hall, Holden Beach, North Carolina.	
Send comments to Honorable Robertson W. Buck, Town Administrator, Town of Holden Beach, 110 Rothchild Street, Holden Beach, North Carolina 28463.	
Town of Long Beach, Brunswick County	
Atlantic Ocean:	
About 300 feet south of Ocean Highway from eastern corporate limits to 25th Street West	*12
Along Yacht Drive from eastern corporate limits to 27th Street West	*12
At confluence of Elizabeth River with Intracoastal Waterway	*14
Along shoreline	*19
Maps available for inspection at the Town Hall, Long Beach, North Carolina.	
Send comments to Honorable Ben C. Thomas, Jr., Mayor, Town of Long Beach, P.O. Box 217, Long Beach, North Carolina 28461.	
Ocean Isle Beach (town), Brunswick County	
Atlantic Ocean:	
At north end of NC 904 bridge over Intracoastal Waterway	*13
At intersection of Craven and Concord Streets	*13
Along southern shoreline of Intracoastal Waterway north of Shallotte Sound	*15
Along shoreline	*20
Maps available for inspection at the Town Hall, Ocean Isle Beach, North Carolina.	
Send Comments to Honorable La Dane W. Bullington, Mayor, Town of Ocean Isle Beach, Rt. #2, P.O. Box 0-8, Ocean Isle Beach, North Carolina 28459.	
City of Southport, Brunswick County	
Intracoastal Waterway/Cape Fear River:	
Just downstream of SR 1526 bridge over Prices Creek	*10
At confluence of Dutchman Creek	*14
Bonnetts Creek:	
Just upstream of Brown Street	*10
About 950 feet upstream of Brown Street	*11
Bonnetts Creek Tributary:	
At confluence with Bonnetts Creek	*11
Just upstream of Leonard Street	*19
Maps available for inspection at the Town Hall, Southport, North Carolina.	
Send comments to Honorable Nelson Smith, City Manager, City of Southport, 201 East Moore Street, Southport, North Carolina 28461.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Town of Sunset Beach Brunswick County	
Atlantic Ocean:	
At intersection of Sunset Boulevard and Main Street	*13
At intersection of Canal Avenue and Shore Line Drive	*13
Along Calabash River shoreline from NC 179 to about 1.75 miles upstream	*13
At south end of Sunset Boulevard bridge over Intracoastal Waterway	*15
Along shoreline	*20
Maps available for inspection at the Town Hall, Sunset Beach, North Carolina.	
Send comments to Honorable Ed Gore, Mayor Pro-Tem, Town of Sunset Beach, Rt. #1, P.O. Box 274, Sunset Beach, North Carolina 28459.	
Town of Yaupon Beach, Brunswick County	
Atlantic Ocean:	
At the intersection of Norton Street and Ocean Drive	*12
At the intersection of NC 133 and Oak Island Drive	*12
At the intersection of NC 133 and northern corporate limits	*14
Along shoreline	*12
Maps available for inspection at the Town Hall, Yaupon Beach, North Carolina.	
Send Comments to Honorable Robert H. Wilson, Mayor, Town of Yaupon Beach, 518 Yaupon Drive, Yaupon Beach, North Carolina 28461.	
NORTH DAKOTA	
Harwood (township), Cass County	
Sheyenne River: 100 feet upstream of the centerline of Interstate Highway 29	*892
Maps available for inspection at Township Hall, Route 1, Harwood, North Dakota.	
Send comments to the Honorable Wayne Freedland, Route 1, Harwood, North Dakota 58042.	
Reed (township), Cass County	
Sheyenne River: 100 feet upstream of the centerline of County Highway 17	*895
County Drain 21: At the confluence with Sheyenne River	*898
Maps available for inspection at Township Hall, Rural Route 2, Fargo, North Dakota.	
Send comments to the Honorable Gene Johnson, Rural Route 2, Fargo, North Dakota 58102.	
VERMONT	
Brattleboro, city, Windham County	
Connecticut River:	
At downstream corporate limits	*229
At upstream corporate limits	*239
West River:	
At confluence with Connecticut River	*236
Approximately 1 mile upstream of Interstate Route 91	*240
At upstream corporate limits	*259
Whetstone Brook:	
At confluence with Connecticut River	*233
Approximately 200' upstream of Elm Street	*264
Approximately 300' upstream of Interstate Route 91 (south)	*340
Upstream side of Guilford Street	*410
Upstream side of George F. Miller Drive	*443
Upstream side of Country Drive	*505
Approximately 100' upstream of Sunset Lake Road	*544
Ames Hill Brook:	
At confluence with Whetstone Brook	*454
Approximately 120 feet upstream of State Route 9	*467
Upstream side of Abbott Road	*596
Upstream side of Hinesburg Road	*641

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Approximately 75' upstream of Ames Hill Road (most upstream crossing)	*710
Maps available for inspection at the office of Christine Hart, Brattleboro Town Planner, Brattleboro, Vermont.	
Send comments to Honorable Corwin Elwell, Town Manager of Brattleboro, Municipal Offices, 230 Main Street, Brattleboro, Vermont 05301.	
WEST VIRGINIA	
Bancroft, town, Putnam County	
Kanawha River: Entire shoreline within community	*582
Maps available for inspection at the Town Hall, Bancroft, West Virginia.	
Send comments to Honorable James Legg, Mayor of the Town of Bancroft, P.O. Box 177, Bancroft, West Virginia 25011.	
Buffalo, town Putnam County	
Kanawha River:	
At downstream corporate limits	*573
At upstream corporate limits	*574
Cross creek:	
At confluence with Kanawha River	*573
At upstream corporate limits	*573
Maps available for inspection at the Town Hall, Buffalo, West Virginia.	
Send comments to Honorable H. B. Hill, Mayor of the Town of Buffalo, P.O. Box 217, Buffalo, West Virginia 25033.	
Poca, town, Putnam County	
Kanawha River:	
At downstream corporate limits	*583
At upstream corporate limits	*584
Pocatalico River:	
At confluence with Kanawha River	*583
At upstream corporate limits	*583
Maps available for inspection at the Town Hall, Poca, West Virginia.	
Send comments to Honorable Larus Casto, Mayor of the Town of Poca, P.O. Box 586, Poca, West Virginia 25159.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 4, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-5915 Filed 3-13-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6649]

Proposed Flood Elevation Determinations; Alabama, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESS: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
City of Selma, Dallas County	
Alabama River:	
About 4.0 miles downstream of U.S. Highway 80	*117
About 0.75 mile upstream of Louisville and Nashville Railroad	*122
Beach Creek: Within community	*121
Jones Creek:	
At confluence with Valley Creek	*118
About 3,100 feet upstream of Chambliss Drive	*128
Valley Creek:	
At confluence with Alabama River	*118
About 2.1 miles upstream of Highland Avenue	*129
Maps available for inspection at the City Hall, 222 Broad Street, Selma, Alabama. Send comments to Honorable Joe T. Smitherman, Mayor, City of Selma, City Hall, Selma, Alabama 36701.	
ARKANSAS	
Bono City, Craighead County	
Whaley Slough Ditch:	
At downstream corporate limits	*256
Upstream side of St. Louis-San Francisco Railroad	*262
Middle Drain:	
At confluence with Whaley Slough Ditch	*262
At upstream corporate limits	*277
Maps available for inspection at 103 College, Bono, Arkansas. Send comments to Honorable Ralph Lee, Mayor of the City of Bono, P.O. Box 127, Bono, Arkansas 72416.	
CALIFORNIA	
Agoura Hills (city) Los Angeles County	
Lindero Canyon (Above Medea Creek): 50 feet upstream from the center of Kanan Road	*822
Lindero Canyon (Above Lake Lindero): 315 feet upstream from the center of Thousand Oaks Boulevard	*970
Medea Creek (Above Mulholland Highway): Intersection of the stream and the center of Sideway Road	*834
Medea Creek (Above Ventura Freeway: 550 feet upstream from the center of Canwood Street	*853
Cheseboro Creek: 40 feet upstream from the center of Driver Avenue	*907

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Palo Comado Creek: 280 feet upstream from the center of Balkins Drive	*967
Maps available for inspection at the Planning Department, 30313 Canwood, Unit 25, Agoura Hills, California. Send comments to the Honorable Carol Sahm, 30313 Canwood, Unit 25, Agoura Hills, California 91301.	
Moorpark (city) Ventura County	
Arroyo Simi: 50 feet upstream from the center of New Los Angeles Avenue	*527
Peach Hills Wash: 80 feet upstream from the center of Beltramo Ranch Road	*477
Maps available for inspection at Public Works Department, 799 Moorpark Avenue, Moorpark, California. Send comments to the Honorable Albert Prieto, 799 Moorpark Avenue, Moorpark, California 93021.	
COLORADO	
Aspen (city) Pitkin County	
Roaring Fork River:	
75 feet upstream from the center of Cemetery Lane	*7,709
75 feet upstream from the center of East Cooper Avenue (State Highway 82)	*7,938
Castle Creek: 90 feet upstream from the center of West Hallam Street (State Highway 82)	*7,837
Maroon Creek: 40 feet downstream from the center of State Highway 82	*7,777
Maps available for inspection at the Engineering Department, 130 South Galena, Aspen, Colorado. Send comments to the Honorable William Stirling, 130 South Galena, Aspen, Colorado 81611.	
Pueblo (city), Pueblo County	
Arkansas River: 50 feet downstream from the center of Interstate Highway 25 (U.S. Highways 85 and 87)	*4,648
Fountain Creek:	
20 feet upstream from the center of the Atchison, Topeka and Santa Fe Railway	*4,660
30 feet downstream from the center of State Highway 47	*4,737
Intersection of 3rd Street and Grand Avenue	*4,661
Intersection of 6th Street and Grand Avenue	#1
Fountain Creek East Bank Overflow: Intersection of Fountain Avenue and 7th Street	*4,682
University Park Tributary: 20 feet upstream from the center of Jerry Murphy Road	*4,760
Wild Horse-Dry Creek: 20 feet upstream from the center of 16th Street	*4,703
Lake Minnequa:	
Center of Lakeshore Avenue, 200 feet north from its intersection with Iowa Avenue	*4,682
Center of Lakeshore Avenue 100 feet north from its intersection with Minnequa Avenue	#2
Maps available for inspection at the Zoning and Public Works Department, 211 East D Street, Pueblo, Colorado. Send comments to the Honorable Mike Salardino, Box 1427, Pueblo, Colorado 81002.	
CONNECTICUT	
Essex, town, Middlesex County	
Falls River:	
Upstream side of Falls River Pond Dam	*14
Approximately 150 feet upstream of Connecticut Valley Railroad	*25
Approximately 100 feet upstream of Farm Estate Road	*44
Shoreline of Wrights Pond at upstream corporate limits	*131

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Vault, Town Hall, Essex, Connecticut. Send comments to Honorable Richard Riggio, First Selectman of the Town of Essex, Town Hall, P.O. Box 6, West Avenue, Essex, Connecticut 06426.	
Norwalk, city, Fairfield County	
Long Island Sound:	
Shoreline at Roton Avenue (extended)	*17.
At Calf Pasture Beach Road (extended)	*14
At intersection of Water Street and Fort Point Street	*11
Norwalk River:	
Downstream side of Wall Street	*12
At confluence of Silvermine River	*54
At upstream corporate limits	*124
Silvermine River:	
At confluence with Norwalk River	*54
Upstream side of Merritt Parkway	*83
At upstream corporate limits	*122
Five Mile River:	
Upstream side of Cudlipp Street	*12
Upstream side of Connecticut Turnpike	*46
Approximately 100 feet upstream of Fillow Street	*103
At upstream corporate limits	*143
Keilers Brook:	
At confluence with Five Mile River	*29
Upstream side of Flax Hill Raod	*60
Approximately 1,000 feet upstream of Connecticut Turnpike	*89
Stony Brook:	
At downstream corporate limits	*94
Upstream side of Field Street	*123
Bells Pond Brook:	
At confluence with Norwalk River	*11
Downstream side of Cannon Street	*37
Approximately 0.5 mile upstream of Blake Street	*68
Maps available for inspection at the Code Coordination Office of the Department of Code Enforcement, City Hall Annex, Roger's Square, East Norwalk, Connecticut. Send comments to Honorable William A. Collins, Mayor of the City of Norwalk, City Hall, 41 North Main Street, South Norwalk, Connecticut 06854.	
Westbrook, town, Middlesex County	
Long Island Sound:	
Shoreline at Grove Beach Point	*15
Shoreline at Gerard Avenue (extended)	*14
Shoreline of western corporate limits	*16
Patchogue River at CONRAIL bridge	*10
Menunketesuck River:	
Menunketesuck River at Old Clinton Road and corporate lit	*7
Upstream side of Old Clinton Road	*12
Falls River:	
At downstream corporate limits	*104
Upstream side of Wright's Pond Dam	*131
Downstream side of Messerschmidt Pond Dam	*164
Maps available for inspection at the Clerk's Vault, Town Hall, Westbrook, Connecticut. Send comments to Honorable Eileen M. Daily, First Selectman of the Town of Westbrook, Town Hall, Boston Post Road, Westrook, Connecticut 06498.	
FLORIDA	
Milton, city, Santa Rosa County	
Blackwater River:	
Just downstream of Louisville and Nashville Railroad	*9
About 0.56 mile upstream of U.S. Route 90	*14
Blackwater Bay: Along Blackwater River about 0.66 mile downstream of Louisville and Nashville Railroad	*11

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Hall, 601 Alabama Street, Milton, Florida. Send comments to Honorable Russ Harber, City Manager, City of Milton, City Hall, P.O. Box 909, Milton, Florida 32572.	
City of Niceville, Okaloosa County	
Swift Creek:	
About 400 feet downstream of State 20	*5
About 4,200 feet upstream of State Road20	*10
Turkey Creek:	
At mouth	*5
About 6,000 feet upstream of State Road 85	*10
Choctawhatchee Bay:	
Along shoreline of Shirk Bayou	*5
At mouth of Mill Creek	*5
At shoreline of Rocky Bayou at State Road 20 bridge	*5
Along shoreline of Rocky Bayou at mouth of Bolton Branch	*7
At shoreline of Boggy Bayou about 650 feet west of intersection of Bay Shore Drive and Cross Street	*7
At shoreline of Boggy Bayou just west of intersection of Bay Shore Drive and 27th Street	*8
Maps available for inspection at the City Building, 208 North Partin Street, Niceville, Florida 32578. Send comments to Honorable Lannie Corbin, City Manager, City of Niceville, 208 North Partin Street, Niceville, Florida 32578.	
Unincorporated areas of Okaloosa County	
Yellow River:	
About 1.5 miles downstream of confluence of Mulligan Creek	*28
About 0.85 mile upstream of confluence of Davis Mill Creek	*78
Shoal River:	
At mouth	*50
About 2900 feet upstream of confluence of Bends Creek	*88
Garnier Creek:	
At mouth	*5
About 2.8 miles upstream of State Road 189	*41
Lightwood Knot Creek:	
At mouth	*5
About 2.73 miles upstream of confluence of West Branch	*50
West Branch:	
At mouth	*10
About 1.27 miles upstream of mouth	*24
Swift Creek:	
About 4,480 feet downstream of State Route 285	*8
About 3,600 feet downstream of State Route 285	*10
Gulf of Mexico:	
About 1,000 feet south of the intersection of U.S. Route 98 and Benning Drive	*4
Along southern shoreline of Santa Rosa Island from the western county boundary to about 1,000 feet south of the intersection of Amberjack Drive and Santa Rosa Boulevard	*7
Along southern shoreline of Santa Rosa Island from about 1.0 mile west of East Pass to about 4.1 miles east of East Pass	*9
Santa Rose Sound:	
Along southern shoreline from western county boundary to Miracle Strip Parkway bridge over The Narrows	*6
Along northern shoreline from western county boundary to about 2.8 miles east of western county boundary	*9
Choctawatchee Bay:	
Along southern shoreline from the eastern county boundary to Indian Bayou	*3
At Grass Lake	*3
Along shoreline of Rocky Bayou east of State Road 20	*5
At Bens Lake Outlet	*6
Along shoreline of Cinco Bayou west of State Road 85	*6

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 200 feet south of the intersection of North View Drive and South View Drive	*8
About 600 feet south of the intersection of Sherwood Drive and Blenheim Road	*8
Maps available for inspection at the Planning and Zoning Office, 10 First Avenue, Ft. Walton Beach, Florida. Send comments to Honorable Larry Anchors, Chairman, Okaloosa County Board of Commissioners, Courthouse Annex, Shalimar, Florida 32579.	
ILLINOIS	
Adams County	
Tributary No. 2:	
At mouth	*576
About 0.9 miles upstream of mouth	*634
Mississippi River:	
About 10.1 miles downstream of confluence of Mill Creek	*475
About 4.0 miles upstream of Lock and Dam No. 20	*493
Emery Creek:	
About 0.5 mile downstream of State Street	*589
Just downstream of State Street	*598
Curtis Creek:	
At mouth	*485
About 200 feet downstream of State Route 96	*625
About 0.9 miles upstream of State Route 96	*660
Cedar Creek:	
About 0.59 mile downstream of 5th Street	*487
About 0.20 mile upstream of 12th Street	*553
Tributary No. 3:	
About 1000 feet downstream of Burlington Northern railroad	*606
About 0.43 miles upstream of 30th Street	*632
Maps available for inspection at the County Clerks Office, Adams County Courthouse, Quincy, Illinois. Send comments to Honorable Robert Ericson, Chairman, Adams County Board, Adams County Courthouse, Quincy, Illinois 62301.	
Unincorporated Areas of Cass County	
Illinois River:	
About 13.2 miles downstream of State Route 100 (downstream county boundary)	*447
About 10.5 miles upstream of State Route 100 (upstream county boundary)	*450
Maps available for inspection at the County Clerks Office, County Courthouse, Virginia, Illinois. Send comments to Honorable Raymond L. Robinson, Chairman, Cass County Board, Cass County Courthouse, Virginia, Illinois 62691.	
Village of East Cape Girardeau, Alexander County	
Mississippi River:	
About 0.6 mile downstream of State Route 146	*355
About 0.8 mile upstream of State Route 146	*356
Maps available for inspection at the Witz Village Barbecue Restaurant, East Cape Park, East Cape Illinois. Send comments to Honorable Joe Aden, Village President, Village of East Cape Girardeau, 106 David Street, East Cape, Illinois 62957.	
Unincorporated Areas of Greene County	
Illinois River:	
About 3.0 miles downstream of State Route 100	*440
About 4.9 miles upstream of Illinois Central Gulf Railroad	*443
Hurricane Creek South:	
At mouth	*441
About 300 feet upstream of Bluff Street	*452

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Office of the Supervisor of Assessments, Greene County Courthouse, Carrollton, Illinois. Send comments to Honorable Charles Barnett, Chairman, Greene County Board of Supervisors, Green County Courthouse, Carrollton, Illinois 62016.	
Unincorporated Areas of Schuyler County	
Illinois River:	
At confluence of La Moine River	*448
About 2,400 feet upstream of confluence of Wilson Creek	*452
Maps available for inspection at the County Clerks Office, Schuyler County Courthouse, Rushville, Illinois. Send comments to Honorable Donald Lerch, Chairman, Schuyler County, Schuyler County Courthouse, Rushville, Illinois 62681.	
KANSAS	
City of New Cambria, Saline County	
Saline River:	
About 0.64 mile upstream of confluence with Smoky Hill River	*1,197
About 1.08 miles downstream of Union Pacific Railroad	*1,199
Smoky Hill:	
At confluence of Saline River	*1,197
About 2.70 miles upstream of confluence of Saline River	*1,199
Maps available for inspection at the City Building, New Cambria, Kansas. Send comments to Honorable Gary Base, Mayor, City of New Cambria, City Building, P.O. Box 38, New Cambria, Kansas 67470.	
City of Salina, Saline County	
Saline River:	
About 1,400 feet downstream of North Fifth Street	*1,219
About 2,200 feet upstream of North Ninth Street	*1,224
Smoky Hill River:	
About 1,500 feet downstream of Missouri Pacific Railroad	*1,206
About 9,100 feet upstream of Crawford Street	*1,236
Mulberry Creek:	
At confluence with Saline River	*1,219
About 4,600 feet upstream of North Ninth Street	*1,225
Dry Creek:	
Just upstream of Union Pacific Railroad	*1,230
About 3,100 feet upstream of Schilling Road	*1,245
The Slough:	
At confluence with Old Smoky Hill River Channel	*1,225
Just upstream of Cloud Street	*1,232
Magnolia Road Ditch:	
About 150 feet upstream of Interstate 135	*1,240
About 1,500 feet upstream of Neal Avenue	*1,243
Mulberry Creek Overflow:	
About 1,650 feet downstream of North Fifth Street	*1,217
About 130 feet upstream of North Fifth Street	*1,220
Maps available for inspection at the City County Building, City Planning Department, Salina, Kansas. Send comments to Honorable John Burgess, Mayor, City of Salina, City County Building, 300 West Ash, Salina, Kansas 67401.	
Unincorporated Areas Saline County	
Smoky Hill River:	
At eastern county boundary	*1,170
About 2.54 miles upstream of confluence of Solomon River	*1,173
About 2.2 miles downstream of confluence of Saline River	*1,195
Just downstream of County Road located about 0.35 mile downstream of confluence of Old Smoky Hill River Channel	*1,210
Just upstream of County Road located about 0.35 mile downstream of confluence of Old Smoky Hill River Channel	*1,215
About 0.37 mile upstream of confluence of Dry Creek Diversion	*1,256
Saline River:	
At confluence with Smoky Hill River	*1,198
About 3.6 miles upstream of U.S. Highway 81	*1,237
Mulberry Creek:	
At confluence with Saline River	*1,219
About 1.2 miles upstream of County Highway 1710	*1,239
Mulberry Creek Overflow:	
At confluence with Saline River	*1,205
Just downstream of North Fifth Street	*1,219
Dry Creek:	
At confluence with Mulberry Creek	*1,228
Just downstream of County Road located about 2.1 miles upstream of Schilling Road	*1,247
Just upstream of County Road located about 2.1 miles upstream of Schilling Road	*1,253
About 2.8 miles upstream of Schilling Road	*1,253
Dry Creek Diversion:	
At confluence with Smoky Hill River	*1,255
About 1,200 feet upstream of State Highway 104	*1,264
Gypsum Creek:	
About 2.0 miles downstream of Missouri Pacific Railroad	*1,226
About 1.6 miles upstream of State Highway 4	*1,242
Solomon River:	
About 0.45 mile upstream of confluence with Smoky Hill River	*1,171
About 350 feet upstream of County Road	*1,172
Magnolia Road Ditch:	
At confluence with Dry Creek	*1,240
About 0.31 mile upstream of Neal Avenue	*1,243
Maps available for inspection at the City County Building, County Planning Department, 300 West Ash, Salina, Kansas. Send comments to Honorable Roy Allen, Chairman of the Board of County Commissioners, City County Building, 300 West Ash, Salina, Kansas 67401.	
KENTUCKY	
Unincorporated Areas of Martin County	
Calf Creek: Within county	*610
Calf Creek Tributary:	
At mouth	*610
About 0.85 mile upstream of mouth	*722
Turkey Creek:	
At mouth	*612
At confluence of Long Fork	*655
Long Fork:	
At confluence with Turkey Creek	*655
About 0.16 mile upstream of the confluence of Pigeonroost Branch	*682
Big Creek: Within county	*652
Big Elk Creek: Within county	*613
Buck Creek:	
About 1.0 mile upstream of mouth	*624
At confluence of Right Fork Buck Creek	*630
Right Fork Buck Creek:	
At confluence with Buck Creek	*630
About 0.25 mile upstream of State Route 2031	*645
Emily Creek:	
At mouth	*628
About 0.5 mile upstream of White Oak Creek Road	*638
Wolf Creek:	
At mouth	*628
About 0.70 mile upstream of confluence of Little Rockcastle Creek	*641
Flutylick Branch: Within county	*609
Friendship Tributary: Within County	*609
Tug Fork:	
About 1.8 miles downstream of confluence of Flutylick Branch	*607
At confluence of Big Creek	*652
Rockhouse Fork:	
About 0.3 mile downstream of the confluence of Williamson Branch	*650
About 0.24 mile upstream of confluence of Stafford Fork	*672
Middle Fork:	
About 1.0 mile downstream of Saltwell Branch Road	*634
About 1.0 mile upstream of confluence of Saltwell Branch	*653
Coldwater Fork:	
About 0.36 mile downstream of confluence of Blacklog Fork	*648
About 0.65 mile upstream of confluence of Collins Branch	*686
Blacklog Fork:	
At mouth	*651
About 2.11 miles upstream of confluence of Little Blacklog Fork	*688
White Oak Fork:	
At mouth	*629
About 0.87 mile upstream of mouth	*653
Pigeonroost Fork:	
At mouth	*635
About 1.28 miles upstream of Norfolk Southern Railway	*642
Maps available for inspection at the Martin County Courthouse, Inez, Kentucky. Send comments to Honorable John B. Callaham, County Judge Executive, Martin County Courthouse, Inez, Kentucky 41224.	
MAINE	
Brunswick, town, Cumberland County	
Casco Bay:	
Shoreline at confluence of Bunganuc Stream	*13
Shoreline of Maquoit Bay at Maquoit Road (extended)	*10
East shoreline of Merepoint Neck	*11
Shoreline of Crow Island	*9
Shoreline of Ocean Drive (extended)	*10
Shoreline of Harpswell Cove	*10
Shoreline of Lower Coombs Island	*9
New Meadows River:	
Shoreline at Thomas Bay	*9
Shoreline at Old Bath Road	*10
Androscoggin River:	
At downstream corporate limits	*10
At Bay Bridge Road (extended)	*10
Downstream side of Main Central Railroad (downstream crossing)	*16
Upstream side Central Maine Power Company Dam	*51
At Interstate 95	*58
Upstream side of dam located approximately 0.5 mile upstream of confluence of Simpson Brook	*79
At Androscoggin-Cumberland County boundary	*81
Maps available for inspection at the Town Manager's Office, Municipal Building, Brunswick, Maine.	
Send comments to Honorable Robert C. Shephard, Chairman of Brunswick Town Council, Municipal Building, 28 Federal Street, Brunswick, Maine 04011.	
MARYLAND	
Kent County	
Chesapeake Bay:	
Shoreline at Cedar Point	*10
Shoreline at Wilson Point	*10
Entire shoreline of Short Cove	*7
Shoreline at Naplay Green Road (extended)	*11
Shoreline at Allan Lane (extended)	*11
At confluence with Tavern Creek	*11
Shoreline at Tolchester Beach Raod	*12
Shoreline west of snd of Barnhardt Boulevard	*12
Shoreline at Worton Point	*13
Shoreline at at Meeks Point	*13
Shoreline at Hawell Point	*14
Sassafras River:	
Shoreline at confluence with Chesapeake Bay	*14

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2.2 miles upstream of confluence with Chesapeake Bay, approximately 250 feet south of shoreline	*11
Approximately 0.70 mile upstream of confluence of Gut Marsh	*14
Downstream side U.S. Route 301 bridge	*11
Chester River:	
At confluence of Hall Creek	*10
Shoreline at Betts Bar Point	*9
At confluence of Grays Inn Creek	*7
Shoreline at State Route 661 (extended)	*7
At confluence of Dam Creek	*7
Shoreline at Collins Road (extended)	*7
At confluence of Morgan Creek	*8
Shoreline at State Route 290	*8
Shoreline at confluence of Mills Branch	*10
Downstream corporate limits of Town of Millington	*13
At confluence of Andover Branch	*16
Radcliffe Creek:	
At confluence with Chester River	*7
Upstream side of State Route 20	*12
At confluence with Subdivision Tributary	*16
Upstream side of CONRAIL bridge	*46
Approximately 280 feet upstream of Mary Morris Road	*65
West Fork Tributary to Radcliffe Creek:	
At confluence with Radcliffe Creek	*20
Upstream side of Steward Road	*34
Upstream side Mary Morris Road	*64
East Fork Tributary to Radcliffe Creek:	
At confluence with Radcliffe Creek	*19
Upstream side of CONRAIL bridge	*39
Approximately 0.93 mile upstream of confluence with Radcliffe Creek	*50
Tributary No. 1:	
At confluence with West Fork Tributary to Radcliffe Creek	*45
Upstream side of Mary Morris Road	*64
Subdivision Tributary:	
At confluence with Radcliffe Creek	*16
Upstream side of Kennedy Drive	*34
East Fork Langford Creek:	
State Route 446 (extended)	*7
Downstream side of Langford-Brices Mill Road	*9
Approximately 60 feet downstream of Chestertown Fairlee Road	*24
Approximately 0.85 mile upstream of Chestertown Fairlee Road	*31
Upstream side of Stockton Startt Road	*49
East Fork Langford Creek Tributary:	
At confluence with East Fork Langford Creek	*37
At upstream side of Pond Dam	*48
Swan Creek:	
At confluence with The Haven	*10
Approximately 0.5 mile upstream of confluence with The Haven	*6
Upstream side of Swan Creek Road	*8
Approximately 60 feet downstream of Remington Pond Dam	*23
Jaggard Pond Tributary:	
At confluence with Swan Creek	*8
At Jaggard Pond Dam	*14
Second Tributary:	
At confluence with Swan Creek	*10
At Farm Pond Dam	*23
Tavern Creek:	
At confluence with Chesapeake Bay	*11
0.5 mile upstream of confluence with Chesapeake Bay	*8
At Swan Creek Road	*6
Upstream side of most downstream Pond Dam	*11
Approximately 0.72 mile upstream of most upstream Pond Dam	*21
Grays Inn Creek:	
Entire shoreline from confluence with Chester River to approximately 4.55 miles upstream of confluence with Chester River	*7
Aproximately 0.19 mile upstream of Rock Hill Road	*12
Grays Inn Creek Tributary:	
At confluence with Grays Inn Creek	*7
Approximately 0.36 mile upstream of Eastern Neck Island Road	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cypress Branch:	
At confluence with Chester River	*16
At State Route 291	*16
Maps available for inspection at the Planning Office, County Courthouse, Chestertown, Maryland	
Send comments to Honorable Mary Roe Walker, President of County Commissioners, Kent County, County Courthouse, Chestertown, Maryland 21620.	
MASSACHUSETTS	
Quincy, city, Norfolk County	
Furnace Brook:	
Upstream of Furnace Brook Parkway	*11
At confluence with Cunningham Brook	*39
Upstream side of Crescent Street	*50
Approximately 850 feet upstream of Hayden Street	*61
Town Brook:	
Upstream side of Elm Street	*12
Upstream side of Water Street	*30
Upstream of second crossing of CONRAIL	*35
Cunningham Brook:	
At confluence with Furnace Brook	*39
Downstream side of Stedman Street	*39
Quincy Bay:	
Shoreline at Monmouth Street (extended)	*11
Shoreline at Sunrise Road (extended)	*17
Shoreline at Ashworth Street (extended)	*15
Shoreline at Bromfield Street (extended)	*15
Sheetflow between Brunswick Street and Bay Street	*#2
Shoreline at Hobomack Road (extended)	*16
Sheetflow between Webster Street and channing Street along Quincy Shore Drive	*#2
Dorchester Bay:	
Shoreline at Shoreham Street (extended)	*11
Shoreline at Victory Road (extended)	*15
Fore River:	
Confluence with Town River Bay	*15
Shoreline at Washington Street Bridge	*14
At Edge Water Drive and Rock Island Road intersection	*12
Town River Bay:	
Confluence with Fore River	*15
Shoreline at Roach Street	*12
Shoreline at Delano Avenue (extended)	*13
Shoreline at Cherry Street (extended)	*15
Maps available for inspection at the Office of Planning and Community Development, City Hall, Quincy, Massachusetts.	
Send comments to Honorable Francis X. McCauley, Mayor of the City of Quincy, City Hall, 1305 Hancock Street, Quincy, Massachusetts 02169.	
MINNESOTA	
City of Buffalo Wright County	
Buffalo Lake: At shoreline	*922
Maps available for inspection at City Hall, 212 Central Avenue, Buffalo, Minnesota 55313.	
Send comments to Honorable Gerald Melgard, Mayor of the City of Buffalo, City Hall, 212 Central Avenue, Buffalo, Minnesota 55313.	
Unincorporated areas of Redwood County	
Minnesota River:	
About 2.5 miles downstream of County Highway 11	*823
About 1.1 miles upstream of County Highway 7	*874
Maps available for inspection at the Redwood County Courthouse, Redwood Falls, Minnesota.	
Send comments to Honorable Richard Jacobsen, Chairman, County Board of Commissioners, Redwood County Courthouse, P.O. Box 4, Redwood Falls, Minnesota 56283.	
Unincorporated areas of Swift County	
Lac Qui Parle: Within community	*943

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Minnesota river:	
About 1,700 feet downstream of State Highway 119	*940
Just downstream of Marsh Lake Dam	*944
Marsh Lake: Within community	*946
Pomme de Terre River:	
About 2.2 miles downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*972
About 2.4 miles upstream of Burlington Northern railroad	*1002
Maps available for inspection at the Swift County Courthouse, 301 14th Street North, Benson, Minnesota.	
Send comments to Honorable John Langon, Chairman, County Board of Commissioners, Swift County Courthouse, P.O. Box 268, Benson, Minnesota 56215.	
MONTANA	
Anaconda-Deer Lodge County (unincorporated areas)	
Warm Springs Creek:	
At center of North Cable Road	*5364
150 feet upstream of Interstate Highway 90	*4818
Maps available for inspection at the Office of Disaster Emergency Services, 800 South Main, Anaconda, Montana.	
Send comments to the Honorable Jim Edwards, 800 South Main, Anaconda, Montana 59711.	
Richland County (unincorporated areas)	
Lone Tree Creek: 150 feet upstream from the center Fourteenth Street (County Route 488)	*1936
Maps available for inspection at County Surveyor's Office, 221 5th Street, SW, Sidney, Montana.	
Send comments to the Honorable Bing C. Poff, P.O. Box 986, Sidney, Montana 59270.	
SIDNEY (CITY), RICHLAND COUNTY	
Lone Tree Creek: 120 feet downstream from center of Ninth Avenue Southwest	*1945
NEVADA	
Churchill County (Unincorporated areas)	
Carson River: At intersection of Carson River and center of U.S. Alternate 95/U.S. Highway 50 (Reno Highway)	*3972
Maps available for inspection at Building Department, 190 West 1st Street, Fallon, Nevada.	
Send comments to Honorable Melba Aldredge, 10 West Williams, Fallon, Nevada 89406.	
NEW HAMPSHIRE	
Hampton, Town, Rockingham County	
Atlantic Ocean:	
Shoreline at southern corporate limits	*14
Area west of shoreline at southern corporate limits and east of Ocean Drive	*12
West side of U.S. Route 1A bridge over Hampton Harbor	*9
Downstream of Towle Farm Road bridge over Taylor River	*9
Area east of U.S. Route 1A and west of shoreline approximately 1.0 mile north of southern corporate limits	*11
Shoreline at North Beach	*20
Shoreline approximately 0.3 mile south of northern corporate limits	*24
Shoreline at northern corporate limits	*14
Shallow Flooding:	
Area between shoreline of Hampton Harbor inlet and southern corporate limits	#2
Area west of Great Boars Head on U.S. Route 1A	#1
Area west of shoreline and east of Meadow Pond	#1

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Area approximately 0.34 mile south of northern corporate limits west of shoreline and east of Ocean Boulevard	#1
Area west of shoreline and east of Ocean Boulevard	#1
Maps available for inspection at the Town Clerk's Office, Hampton, New Hampshire. Send comments to Honorable Phillip G. Richards, Town Manager of Hampton, 136 Winnacunnet Road, Hampton, New Hampshire 03842.	
New Castle, town, Rockingham County	
Atlantic Ocean:	
Shoreline on east side of Jaffrey Point	*18
Shoreline at Ocean Avenue (extended)	*14
North shoreline of Goat Island	*11
Shoreline at Laurel Lane	*9
Entire shoreline of Campbells Island	*9
Maps available for inspection at the Clerk's Vault, Town Hall, New Castle, New Hampshire. Send comments to Honorable Peter Garmester, Chairman of the Board of Selectmen for the Town of New Castle, P.O. Box 367, Town Hall, New Castle, New Hampshire 03854.	
North Hampton, town, Rockingham County	
Winnicut River:	
At downstream corporate limits	*41
Upstream side of Walnut Avenue	*49
Upstream side of North Hampton Road	*53
At upstream corporate limits	*57
Little River:	
Upstream side of Woodland Road	*10
Approximately .5 mile upstream of Woodland Road	*17
Approximately 60 feet downstream of upstream dam	*27
Upstream side of upstream dam	*35
Approximately 65 feet upstream of Mill Road	*39
Shallow Flooding:	
Southeast of intersection of Appledore Avenue with Ocean Boulevard	#1
West side of Ocean Boulevard from intersection with Willow Avenue to Northern corporate limits	#1
Atlantic Ocean:	
Area in the vicinity of Philbrick Pond	*9
Area in the vicinity of Little River downstream of Woodland Road	*9
Shoreline at northern corporate limits	*19
Shoreline approximately 500 feet south of northern corporate limits	*23
Shoreline at Atlantic Avenue (extended)	*19
Shoreline at southern corporate limits	*14
Maps available for inspection at the Town Clerk's Office, Town Hall, North Hampton, New Hampshire. Send comments to Honorable Robert Southworth, Chairman of the Board of Selectmen for the Town of North Hampton, P.O. Box 71, North Hampton, New Hampshire 03862.	
NORTH CAROLINA	
Town of Bayboro, Pamlico County	
Atlantic Ocean/Pamlico Sound/Bay River: Within Community	*8
North Prong River: Within Community	*8
South Prong River: Within Community	*8
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina. Send comments to Honorable I. Lee Whorton, Mayor, Town of Bayboro, P.O. Box 519, Bayboro, North Carolina 28515.	
Unincorporated areas, Bertie County	
Atlantic Ocean/Albemarle Sound/Chowan River: Along shoreline from the northern county boundary to about 0.8 mile downstream of the U.S. Highway 17 bridge	*8

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Albemarle Sound/Batchelor Bay:	
At Black Walnut Point	*7
At Morgan Swamp	*8
Cashie River:	
About 1.7 miles downstream of SR 1301	*11
About 1.6 miles upstream of U.S. Highway 13	*15
About 2,400 feet downstream of SR 1208	*80
About 2,100 feet upstream of SR 1208	*95
Cashie River Tributary:	
About 1.6 miles downstream of NC 11	*49
Just downstream of NC 11	*60
Just upstream of NC 11	*65
Just upstream of SR 1201	*71
Cashie Swamp:	
Just downstream of SR 1204	*72
Just upstream of NC 308	*80
Chiska Creek:	
At confluence with Cashie River	*15
Just upstream of SR 225	*20
About 0.5 mile upstream of NC 308	*48
Cricket Swamp:	
At confluence with Salmon Creek	*13
Just upstream of NC 45	*14
Eastmost Swamp:	
At confluence with Salmon Creek	*13
Just downstream of SR 1354	*44
Eastmost Swamp Tributary No. 1:	
At confluence with Eastmost Swamp	*30
Just upstream of SR 1355	*36
Eastmost Swamp Tributary No. 2:	
At confluence with Eastmost Swamp	*33
Just upstream of NC 45	*42
Eastmost Swamp Tributary No. 3:	
At confluence with Eastmost Swamp	*36
Just downstream of SR 1354	*45
Jacks Branch:	
About 2,500 feet downstream of SR 1120	*54
Just downstream of NC 11	*70
Salmon Creek:	
At confluence with Chowan River	*7
At confluence of Cricket Swamp	*13
Unnamed Tributary No. 1:	
At confluence with Salmon Creek	*9
Just downstream of NC 45	*11
Just upstream of U.S. Highway 17	*22
Unnamed Tributary No. 2:	
At confluence with Unnamed Tributary No. 1	*22
Just upstream of U.S. Highway 17	*36
Maps available for inspection at the County Courthouse, Dundee Street, Windsor, North Carolina. Send Comments to Honorable John E. Whitehurst, Manager, Bertie County, County Courthouse, P.O. Box 530, Windsor, North Carolina 27963.	
Unincorporated areas, Camden County	
Albemarle Sound: Along shoreline from about 2 miles south of Miles Point to Camden Point	*7
Intracoastal Waterway:	
Along shoreline of Indiantown Creek from SR 1147 to U.S. Highway 158	*6
Along Crooked Creek shoreline from the mouth to SR 1107	*7
Along shoreline from Camden Point to confluence of Crooked Creek	*7
Pasquotank River:	
Along shoreline from about 1.2 miles upstream of SR 1205 to about 0.3 miles west of intersection of Whitehall Road and Holly Drive	*6
Along Sawyers Creek downstream of SR 1203	*6
About 0.2 mile west of intersection of NC 343 and SR 1138	*6
Along shoreline from about 1.0 mile upstream of Treasure Point to about 2.0 miles south of Miles Point	*7
Along Areneuse Creek from mouth to NC 343	*7
At confluence of Raymond Creek	*7
Along Portohonk Creek downstream of SR 1148	*7

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the County Courthouse, Camdem, North Carolina. Send comments to the Honorable J.C. Roundtree, Chairman, Board of County Commission, Rt. 1, Box 86, South Mills, North Carolina 27976.	
Unincorporated areas, of Dare County	
Atlantic Ocean:	
At the intersection of NC 12 and SR 1241	*6
Along shoreline from northern county boundary to Oregon Inlet	*12
Atlantic Ocean/Pamlico Sound:	
About 1,000 feet south of U.S. Highway 264 from the bridge over Long Shoal River to the bridge over Deep Creek	*5
At the intersection of NC 12 and Forest Road	*9
Atlantic Ocean/Roanoke Sound:	
At the intersection of Dogwood Circle and Scuppernong Road	*9
At the intersection of SR 1141 and SR 1143	*11
Atlantic Ocean/Croatan Sound:	
At the intersection of SR 1111 and SR 1112	*7
At Manns Harbor Ferry Landing	*9
Atlantic Ocean/Oregon Inlet/Davis Channel/Croatan Sound/Roanoke Sound: Entire shoreline of Smith Island	*9
Atlantic Ocean/Currituck Sound:	
At the intersection of Duck Road and Dune Road	*7
At Martin Point	*8
Atlantic Ocean/Albermarle Sound:	
Along SR 1113 near Mashoes	*7
At Caroon Point	*10
Atlantic Ocean/Albemarle Sound/Croatan Sound/Pamlico Sound:	
Along Alligator River shoreline between Cypress Point and Bay Point	*4
At Ned Bees Point	*7
Maps available for inspection at the County Administration Building, Budleigh Street, Manteo, North Carolina. Send comments to the Honorable Jack W. Cahoon, County Manager, Dare County, County Administration Building, Budleigh Street, Manteo, North Carolina 27954.	
Town of Kill Devil Hills, Dare County	
Atlantic Ocean:	
About 50 feet west of shoreline from northern corporate limits to Lake Drive	*11
Along shoreline	*12
Atlantic Ocean/Roanoke Sound/Colington Creek:	
Along shoreline on western corporate limits	*9
Along Virginia Dare Trail from Archdale Street to southern corporate limit	*9
Maps available for inspection at the Town Hall, Kill Devil Hills, North Carolina. Send comments to Honorable Lowell Parry, Mayor, Town of Kill Devil Hills, Town Hall, P.O. Box 719, Kill Devil Hills, North Carolina 27948.	
Town of Kitty Hawk, Dare County	
Atlantic Ocean:	
About 150 feet west of Shoreline between East White Avenue and Tateway Road	*8
Along shoreline	*12
Atlantic Ocean/Currituck Sound/Kitty Hawk Bay: Along Currituck Sound and Kitty Hawk Bay shoreline within community	*9
Maps available for inspection at the Town Hall, Kitty Hawk, North Carolina. Send comments to Honorable Carlton P. Smith, Mayor, Town of Kitty Hawk, Town Hall, P.O. Box 549, Kitty Hawk, North Carolina 27949.	
Town of Manteo, Dare County	
Roanoke Sound:	
Along Corporate Limits west of Virginia Dare Road	*9
Along Ananias Dare Street about 1,600 feet from the intersection with Queen Elizabeth Avenue	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, Manteo, North Carolina.	
Send comments to Honorable Harry Schiffman, Mayor, Pro/Tem, Town of Manteo, Town Hall, P.O. Box 246, Manteo, North Carolina 27954.	
Town of Nags Head, Dare County	
Atlantic Ocean:	
About 200 feet west of shoreline from East Curlew Street to about 600 feet south of East Hollowell Street	*9
About 150 feet west of shoreline from East Dune Street to about 700 feet south of East Forrest Street	*9
About 200 feet west of shoreline from East Hargrove Street to about 300 feet north of East Ida Street	*9
About 150 feet west of shoreline from East Indigo Street to about 200 feet north of East June Street	*9
About 175 feet west of shoreline from about 600 feet north of East Jacob Street to East Juncos Street	*9
About 175 feet west of shoreline from East Surfside Drive to about 250 feet south of East Seagull Drive	*9
Along shoreline	*12
Roanoke Sound:	
At intersection of East Abalone Street and South Memorial Avenue	*9
Along shoreline	*9
At intersection of West Sound Side Road and South Croatan Highway	*9
At intersection of Hawksnest Street and South Virginia Dare Trail	*9
Along western corporate limits from East Gulfstream Street to southern corporate limits	*9
At intersection of East Gulf Street and South Virginia Dare Trail	*9
Maps available for inspection at the Town Hall, Nags Head, North Carolina.	
Send comments to Honorable Donald W. Bryan, Mayor, Town of Nags Head, Town Hall, P.O. Box 99, Nags Head, North Carolina 27959.	
Town of Oriental, Pamlico County	
Atlantic Ocean/Pamlico Sound/Neuse River: Within extraterritorial limits	*8
Morris Creek: Within extraterritorial limits	*8
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina.	
Send comments to Honorable Dennis Barkley, Acting Mayor, Town of Oriental, P.O. Box 472, Oriental, North Carolina 28571.	
Unincorporated areas of Pasquotank County	
Little River:	
Just downstream of SR 1197	*7
About 1.44 miles upstream of U.S. Highway 17	*10
Atlantic Ocean/Albemarle Sound/Little River:	
At the intersection of SR 1115 and SR 1116	*5
At Hobbs Landing	*5
At mouth of Halls Creeks	*7
Atlantic Ocean/Knobbs Creek: Just downstream of SR 1332 bridge over Knobbs Creek	*7
Atlantic Ocean/Albemarle Sound/Pasquotank River:	
Entire shoreline of Goat Island	*6
At the intersection of SR 1101 and SR 1116	*6
At mouth of Bettys Creek	*6
At the intersection of SR 1203 and SR 1204	*7
Maps available for inspection at the County Courthouse., Elizabeth City, North Carolina.	
Send comments to Honorable W. David Harris, County Manager, Pasquotank County, County Courthouse, Box 39 Elizabeth City, North Carolina 27909.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Town of Stonewall, Pamlico County	
Atlantic Ocean/Pamlico Sound/Bay River/Trent Creek:	
Along Alligator Creek from NC 55 to Trent Creek	
Along Trent Creek from Alligator Creek to Bay River	*7
Atlantic Ocean/Pamlico Sound/Bay River/South Prong Bay River: Along shoreline of Bay River and South Prong Bay River from about 1.2 miles downsteram of Center Street to NC 55	*7
Maps available for inspection at the Pamlico County Courthouse, Bayboro, North Carolina.	*8
Send comments to Honorable Robert Cowden, Mayor, Town of Stonewall, P.O. Box 96, Stonewall, North Carolina 28583.	
Town of Vandemere, Pamlico County	
Atlantic Ocean/Pamlico Sound/Bay River: Within Community	*8
Maps available for inspection at Pamlico County Courthouse, Bayboro, North Carolina.	
Send comments to Honorable Billy W. Harris, Mayor, Town of Vandemere, P.O. Box 338, Vandemere, North Carolina 28587.	
OHIO	
City of Springfield, Clark County	
Mad River:	
At Confluence of Mill Creek	*903
About 0.52 mile upstream of U.S. Route 68	*909
Buck Creek:	
At mouth	*906
About 0.55 mile upstream of Belmont Avenue	*954
Maps available for inspection at the City Building, 76 East High Street, Springfield, Ohio.	
Send comments to Honorable W. Gregg LaMar, City Manager, City of Springfield, City Building, 76 East High Street, Springfield, Ohio 45502.	
RHODE ISLAND	
Pawtucket, city, Providence County	
Seekonk River:	
At Bishop Street (extended)	*19
Western shoreline at Ridge Avenue (extended)	*18
At Englewood Avenue (extended)	*18
Approximately 150 feet west of western shoreline at Lyman Street (extended)	*17
At I-95	*16
Shoreline at corporate limits	*19
Shoreline at Exeter Avenue (extended)	*18
Approximately 150 feet west of western shoreline at Lyman Street (extended)	*17
Shoreline at Arnold (extended)	*18
Maps available for inspection at the Office of City Engineer, 3rd Floor, Pawtucket City Hall Planning Department, 200 Main Street, Pawtucket, Rhode Island.	
Send comments to Honorable Henry S. Kirch, Mayor of the City of Pawtucker, City Hall, 137 Roosevelt Avenue, Pawtucket, Rhode Island 02860.	
South Kingston, town, Washington County	
Saugatucket River:	
At Silver Lake Road	*10
Approximately 250 upstream of Church Street	*17
Upstream side of Saugatucket Pond Dam	*32
Upstream side of Saugatucket Road	*36
Block Island Sound:	
Shoreline at west corporate limits	*18
Area at south end of Rose Briar Avenue	*12
Area at south end of Moonstone Beach Road	*15
Sheet flow area along south end of Matunuck Beach Road	#2
Shoreline at east corporate limits	*19
Area at south end of Dory Court (extended approximately 100 feet)	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shoreline at Jerry Brown Farm Road (extended)	*12
Entire shoreline of Silver Spring Cove	*11
Rhode Island Sound: Entire shoreline of Pettaquamscutt River within community	*11
Maps available for inspection at the Town Planning Office, Town Hall, South Kingston, Rhode Island.	
Send comments to Honogable Gilbert Indeglia, President of the Town Council of South Kingston, Town Hall, 66 High Street, Wakefield, Rholde Island 02879.	
TENNESSEE	
City of Waverly, Humphreys County	
Trace Creek:	
About 1.7 miles downstream of Brown Town Road	*441
Just downstream of upstream U.S. Highway 70 crossing	*585
Tributary A:	
Mouth at Trace Creek	*506
Just upstream of the Louisville and Nashville Railroad	*515
About 3,400 feet upstream of Louisville and Nashville Railroad	*556
Tributary B:	
Mouth at Trace Creek	*519
Just downstream of the upstream Little Richland Road Crossing	*566
Tributary C:	
Mouth at Trace Creek	*531
About 0.8 mile upstream of North Railroad Street	*587
Tributary D:	
Mouth at Trace Creek	*572
About 1.6 miles upstream of the Louisville and Nashville Railroad	*602
Maps available for inspection at the City Hall, 103 East Main Street, Waverly, Tennessee.	
Send comments to Honorable Roy Bell, Mayor, City of Waverly, City Hall, P.O. Box 71, Waverly, Tennessee 37185.	
TERRITORY OF GUAM	
Harmon Sink: Intersection of Marine Drive (Route 1) and Simon Sanchez Street	*93
Tamuning Drainageway: Intersection of the stream and the center of Serenu Avenue	*8
Agana River:	
Intersection of the stream and the center of Marine Drive (Route 1)	*11
Center of West Soleded Avenue, 160 feet west of its intersection with Aspinall Avenue	*10
Fonte River: 100 feet upstream from the center of Marine Drive (Route 1)	*12
Asan River: Intersection of the stream and the center of Asan Ocean View Drive (Route 1)	*14
Calacag River: 520 feet upstream from the center of Ramona Street	*14
Tagusg River: 330 feet upstream from the center of Marine Drive (Route 1)	*9
Masso River:	
Intersection of the stream and the center of Assumption Drive	*16
Center of Marian Peling Street, 140 feet east of its intersection with Tuncap Street	*9
Togcha River:	
Intersection of the stream and the center of Marine Drive (Route 2)	*12
Center of North Perino Street, 800 feet north of its intersection with Chalan Obispo Olana	*9
Salinas River: Intersection of the stream and the center of Marine Drive (Route 2)	*11
Finile Creek: 500 feet upstream from the center of Marine Drive (Route 2)	*11
Gaan River: 50 feet upstream from the center of Marine Drive (Route 2)	*11
Auau Creek: 1,050 feet upstream from the center of Marine Drive (Route 2)	*11
Chaligan Creek: 430 feet upstream from the center of Marine Drive (Route 2)	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Taleyfac River: 30 feet upstream from the center of Marine Drive (Route 2)	*11
Umatac River: 40 feet upstream from the center of South San Dinisio Drive (Route 4)	*10
Madog River: 30 feet upstream from the confluence with Laelas River and Umatac River	*16
Laelae River: 460 feet upstream from the confluence with Umatac River and Madog River	*20
Geus River: 25 feet downstream from the center of Espinosa Avenue	*50
Manell River: 50 feet northeast along Joutan Lane from the intersection of Joutan Lane and Chalan Canton Tasi (Route 4)	*2
Unnamed Stream 1M: 520 feet upstream from the center of Chalan Canton Tasi (Route 4)	*8
Unnamed Stream 2M: 850 feet upstream from the center of Chalan Canton Tasi (Route 4)	*8
Inarajan River: 900 feet upstream from the center of Pale Duenas Street (Route 4)	*9
Agana Bay: Intersection of Tan Marian Coatta Loop and Trankilo Street	*8
Asan Bay: 100 feet north of the intersection of Asan Ocean View Drive and Ramona Street	*10
Piti Bay: Intersection of Marine Drive (Route 1) and J. Sn. Quenga Street	*10
Agat Bay: Intersection of Marine Drive (Route 2) and Umang Road	*11
Umatac Bay: 150 feet downstream from the center of South San Dinisio Drive	*10
Cocos Lagoon: Intersection of Chalan Canton Tasi (Route 4) and Quinene Road	*8
Inarajan Bay: Intersection of Beten Avenue and Famasyan Street	*9
Maps available for inspection at Department of Civil Defense, Emergency Services Office, Aguana, Guam.	
Send Comments to the Honorable Ricardo Bordallo, P.O. Box 2950, Aguana, Guam 97910.	
TEXAS	
Springtown, city, Parker and Wise Counties	
Dry Branch:	
At downstream corporate limits	*843
At upstream corporate limits	*864
Walnut Creek:	
At downstream corporate limits	*824
At confluence of Browders Creek	*828
Approximately 100 feet upstream of State Route 51	*853
Approximately 550 feet upstream of upstream corporate limits	*878
Browders Creek:	
At confluence with Walnut Creek	*828
Approximately 100 feet upstream of State Route 199	*849
Approximately 50 feet upstream of FM 1542	*866
Approximately 1,000 feet upstream of State Route 51	*877
Stream WCLSP)-1:	
At confluence with Walnut Creek	*853
At corporate limits	*859
Maps available for inspection at City Hall, Springtown, Texas.	
Send comments to Honorable Wayne Lacave, Mayor of the City of Springtown, Parker and Wise Counties, P.O. Box 444, Springtown, Texas 76082.	
VERMOUNT	
Bennington, town, Bennington County	
Walloomsac River:	
At downstream corporate limits	*517
Downstream side of Henry Covered Bridge	*540
Downstream side of Murphy Road	*553
Upstream side of Paper Mill Bridge	*562
Upstream side of Robinson Covered Bride	*567
Upstream side of Hicks Avenue Foot Bridge	*610
Confluence With Roaring Branch	*618
South Stream:	
Confluence with Roaring Branch	*618
Approximately 65 feet upstream of Hunt Street	*625

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of Lenoard Street	*642
Upstream side of Benmont Avenue	*661
Upstream side of U.S. Route 7	*681
Upstream side of Park Street	*699
Upstream side of State Route 9	*734
Approximately .08 mile upstream of State Route 9	*752
Roaring Branch:	
Confluence with Walloomsac River	*618
Upstream side of Park Street	*665
Upstream side of Brooklyn Drive	*750
Upstream side of State Route 9	*914
Approximately 0.5 mile upstream of State Route 9	*970
Furnace Brook:	
Confluence with Walloomsac River	*575
Downstream side of Morse Borrow Pit Bridge	*578
Upstream side of Orchard Road	*613
Upstream side of Park Street	*650
Approximately 1,400 fee upstream of Park Street	*664
Maps available for inspection at the Zoning Administration Office, Bennington, Vermont.	
Send comments to Honorable James Colvin, Town Manager of Bennington, Town Hall, Bennington, Vermont 05201.	
WISCONSIN	
Village of Dallas, Barron County	
Upper Pine Creek:	
About 700 feet downstream of confluence of Bass Creek	*1046
Just downstream of Mill Dam	*1048
Just upstream of Mill Dam	*1055
About 4,000 feet upstream of Dallas Street	*1056
Bass Creek:	
At mouth	*1047
At divergence from Upper Pine Creek	*1055
East Branch Upper Pine Creek:	
At confluence with Upper Pina Creek	*1055
About 1,050 feet downstream from 3rd Avenue	*1056
Maps available for inspection at the Village President's Office, Village Hall, Dallas Street, Dallas, Wisconsin.	
Send comments to Honorable Harlow Berg, Village President, Village of Dallas, Village Hall, Dallas Street, Dallas, Wisconsin 54733.	
Unincorporated areas of Shawano County	
Oconto River:	
At downstream county boundary	*757
At upstream county boundary	*774
Pensaukee River:	
At county boundary	*773
Just downstream of Nichols Drive	*784
Wolf River:	
Just upstream of County Highway CCC	*791
Just downstream of Shawano Dam	*798
Just upstream of Shawano Dam	*804
Just downstream of Upper Shawano Dam	*810
Just upstream of Upper Shawano Dam	*821
At upstream of county boundary	*821
Red River:	
About 2.5 miles downstream of County Highway A	*830
Just downstream of Geider Road	*878
About 1.5 miles upstream of Weed Dam	*899
Duchess Creek:	
At mouth	*804
About 1.6 miles upstream of County Highway H	*817
Tributary to Duchess Creek:	
At mouth	*809
Just downstream of County Highway H	*812
East Unnamed Tributary to Shawano Lake:	
At mouth	*804
Just downstream of State Highway 22	*813
West Unnamed Tributary to Shawano Lake:	
At mouth	*804
Just downstream of Shady Lane	*811
Washington Lake: Entire shoreline	*804
Loon Lake: Entire shoreline	*806
Lulu Lake: Entire shoreline	*808

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shawano Creek-Shawano Lake: Within community	*804
Rose Brook:	
At mouth	*797
About 1.7 miles upstream of Rose Brook Road	*818
Shioc River:	
About 1,300 feet downstream of County Highway W	*790
About 2,200 feet upstream of County Highway W	*799
Middle Branch Embarrass River at Carpline:	
Just upstream of Caroline Dam	*901
About 4.0 miles upstream of Caroline Dam	*932
South Branch Embarrass River:	
At mouth	*902
About 1,700 feet upstream of County Highway M (near Caroline)	*905
About 3,400 feet downstream of Lenz Road	*943
About 700 feet upstream of County Highway M (near Tigerton)	*956
North Branch Embarrass River:	
Just upstream of Grant Road	*853
About 4,400 feet upstream of North Town Line Road	*900
Just upstream of County Highway D	*945
Just downstream of Tilleda Dam	*947
About 2,900 feet upstream of Tilleda Dam	*960
About 3,000 feet downstream of Regina Road	*1100
Just downstream of Regina Road	*1114
Just upstream of Regina Road	*1126
About 3,000 feet upstream of Regina Road	*1127
Embarrass River:	
At county boundary	*801
About 0.3 mile upstream of State Highway 22	*808
About 1,200 feet downstream of County Highway D	*838
Just upstream of Stoney Hill Road	*847
About 2.8 miles upstream of Stoney Hill Road	**51
About 3,800 feet downstream of County Highway G	*890
Just upstream of County Highway G	*895
South Branch Pigeon River:	
At county boundary	*933
About 0.5 mile upstream of Tauferner Road	*987
South Branch Pigeon River Tributary:	
At mouth	*957
About 0.9 mile upstream of Chicago and Northwestern Railroad (upstream crossing)	*983
Tributary to South Branch Pigeon River Tributary:	
At mouth	*958
Just downstream of Nero Dam	S*997
Maps available for inspection at the Zoning Administrative Office, Shawano County Courthouse, 311 North Main Street, Shawano, Wisconsin 54166.	
Send comments to Honorable Harry Bauman, Chairman, Shawano County Board of Commissioners, Shawano County Courthouse, 311 North Main Street, Shawano, Wisconsin 54166.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: March 1, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–5914 Filed 3–13–85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 154

[CGD 77-069]

Proposed Safety Standards for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise U.S. regulations for existing gas ships carrying bulk liquefied gases in U.S. waters by adopting certain standards of the IMO Existing Gas Ship Code that are not currently in U.S. regulations. The proposed rule would make U.S. regulations for existing gas ships compatible with the internationally accepted standard. The proposed rule would improve the level of safety associated with the transport of liquefied gases, and would streamline Coast Guard certification procedures by reducing plan review.

DATE: Comments must be submitted on or before June 12, 1985.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21) (CGD 77-069), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-CMC/21), Rm 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony L. Rowek, Office of Merchant Marine Safety (G-MTH-1/12), Rm 1208, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202-426-1217) between 7:15 a.m. and 3:45 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Each comment should include the name and address of the person submitting the comment, the docket reference number (CGD 77-069), the specific section of the proposal to which each comment applies, and sufficient support for each comment. If an acknowledgement is desired, a stamped, addressed postcard or envelope should be 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 at a time and place to be set in a subsequent notice in the Federal Register if written requests for a hearing are received from interested persons raising valid issues and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

On November 12, 1975 the International Maritime Organization (IMO) adopted the *Code for the Construction and Equipment Ships Carrying Liquefied Gases in Bulk*, Resolution A.328(IX) (New Gas Ship Code). Coast Guard regulations based on this code were promulgated in May 3, 1979 (44 FR 25986). Both the New Gas Ship Code and U.S. regulations were limited to "new" ships, as defined in the documents. Recognizing that there existed a large number of gas ships, already in service, that would not fall under the applicability of the New Gas Ship Code, IMO in October 1976 adopted the *Code for Existing Ships Carrying Liquefied Gases in Bulk* (Existing Gas Ship code). Generally, this code applies to vessels constructed and delivered prior to July 1, 1980.

On June 30, 1977 (42 FR 33353), the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) which advised the public of our intention to adopt safety standards of the Existing Gas Ship Code that were not currently in U.S. regulations for existing gas ships. The ANPRM solicited comments and economic information concerning the impact of these international standards. Seven responses were received representing four interested parties. The comments were of 4 general types:

1. Economic information relative to the implementation of these international standards.

2. Comments supportive of the Coast Guard's efforts to improve the level of safety in transporting liquefied gases.

3. Identification of areas where specific gas ships did not comply with these international standards.

4. Comments on the feasbility, practicality and benefit of modifying an existing ship to meet these international standards.

The economic information received was used to develop the draft Economic Evaluation for this proposed rulemaking. The commnets concerning the feasibility, practicality, and benefit of the proposed rulemaking are discussed below.

Three comments on the ANPRM were received requesting a delay in the effective date of the rulemaking. It was stated that this would allow owners and operators sufficient lead time to schedule drylocking, procure the necessary materials, obtain Coast Guard certification, and accomplish the necessary modifications. While there was some merit to this position when the Existing Gas Ship Code was not fully implemented, the Coast Guard does not now plan to extend the effective date of the rulemaking past the normal time, i.e. usually 90 days after publication in the Federal Register. There are several reasons for this decision:

1. As of October 31, 1982, the 2 and 6 year requirements of the Existing Gas Ship Code are in effect for all ships subject to that Code.

2. Ship owners have had ample notice of the Coast Guard's intent to incorporate certain requirements of the Existing Gas Ship Code.

3. The proposed revisions would only need to be met when the vessel's Certificate of Inspection or Letter of Compliance is renewed, which could be up to 2 years after the publication of the final rule.

One comment on the ANPRM was received asking if the proposed rulemaking applied only to U.S. flag ships. The proposed rulemaking would apply to U.S. flag liquefied gas ships and those foreign flag liquefied gas ships trading in U.S. ports.

Two comments on the ANPRM were received on paragraph 3.2.4 of the Existing Gas Ship Code. Both requested clarification of the degree of tightness expected of closing devices. This IMO recommendation is incorporated by proposing a reference to § 154.330(e), which requires ". . . metal closures that pass a tightness test with a fire hose at not less than 207 kPa gauge (30 psig)". The water hose test is used as a measure of gas tightness since true gas tightness tests of these closing devices are impractical on a vessel.

One comment on the ANPRM was received on paragraph 3.5.1 of the Existing Gas Ship Code. It asked whether the Coast Guard was going to require that existing gas ships meet the access hole dimensions for new gas ships in § 154.340. The comment indicated that the economic impact of enlarging these access holes to meet that requirement would be prohibitive. Paragraph 3:5.1 of the Existing Gas Ship Code does not specify dimensions for the access holes, stating only that they must be large enough to permit "the possibility of entry and inspection of any such space or its equipment by personnel wearing protective clothing and breathing apparatus and in the event of injury to allow unconsious personnel to be removed from that

space." If this can be shown to the satisfaction of the administration, it is acceptable to the Coast Guard.

Two comments on the ANPRM were received on paragraph 5.2.5 of the Existing Gas Ship Code. The first stated that the Coast Guard should reconsider the practice of allowing liquid relief valves to discharge into a cargo tank because cold LNG could be discharged into a warm or gas-free tank without anyone being aware of it. This design is an alternative to discharging the relieved liquid into the vent mast. It is an allowed alternative under the Existing Gas Ship Code, the New Gas Ship Code, and current U.S. regulations for liquefied gas ships. The Coast Guard is not aware of any incidents where it has caused a problem, nor of any installations where good design practice could not overcome the potential hazard. Therefore, no change will be made.

The second comment on paragraph 5.2.5 of the Existing Gas Ship Code requested clarification of acceptable methods for disposing of LNG that has accumulated in the vent mast. It stated that draining the LNG to a cargo tank is not possible when the tank is under pressure. Under these circumstances any method that would enhance the vaporization of the accumulated LNG in the vent mast, while not releasing liquid to the environment would be acceptable. Examples of acceptable methods are: spraying the mast with water from a fire hose (sugested in the comment) or the vessel's water spray system, or, use of steam heating coils around the outside of the vent mast. Examples of unacceptable methods are: draining the LNG into a drip tray, or, draining the LNG over the side of the ship or onto the deck.

One comment on the ANPRM was received on paragraph 8.2.11 of the Existing Gas Ship Code. Like the previous comment it requested clarification of the acceptable methods for disposing of LNG that has accumulated in the cargo vent piping. See the discussion in this preamble on paragraph 5.2.5 of the Existing Gas Ship Code.

One comment on the ANPRM was received on paragraph 8.4.3 of the Existing Gas Ship Code. It stated that vacuum relief valves should only vent cargo or inert gas into a cargo tank to relieve internal vacuum, and that air should only be used as a last resort. The three alternatives, cargo, inert gas, or air, are allowed by the New Gas Ship Code, the Existing Gas Ship Code, U.S. regulations for new gas ships, 46 CFR 154.804, and for existing gas ships. The intent was to provide immediate relief of cargo tank vacuums to protect the tank from rupture or damage. The three alternatives will continue to be allowed for existing gas ships.

Finally, three comments on the ANPRM were received requesting that existing installations on board ships be considered equivalent to the corresponding standards of the Existing Gas Ship Code when those existing installations meet the intent or spirit of the Code. These comments were not critical of present Coast Guard or Existing Gas Ship Code standards. Equivalence is determined on a case-by-case basis. The procedures to be followed and standards to be met are contained in proposed § 154.32. A general equivalence or "grandfathering" of existing installations is not included in this proposal.

The Coast Guard also discussed this rulemaking at a public meeting of the Chemical Transportation Advisory Committee's (CTAC) Subcommittee on Liquefied Gas Vessels held on February 1, 1983 at U.S. Coast Guard Headquarters, Washington, D.C. At the meeting the Coast Guard presented the objectives of this rulemaking, described the proposed changes to the certification procedures for foreign flag existing gas ships, and explained the benefits to be derived from it. The Coast Guard solicited the subcomittee's comments on a draft of the proposed rulemaking and its economic impact on the industry. The minutes of the meeting have been placed in the public docket and a tape recording is available for listening in Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. The subcommittee's comments on a draft of the proposed rulemaking are discussed in the following paragraphs.

One comment from CTAC concerned the draft list of additional requirements an existing gas ship would meet (see proposed § 154.12(e)). The subcommittee suggested that the list would contain requirements in excess of those contained in the Existing Gas Ship Code. This was not the Coast Guard's intention. The Coast Guard explained at the meeting that the intent was to include only those standards of the Existing Gas Ship Code that were not in U.S. regulations. The list was reviewed and revised to meet that concept.

Several comments from CTAC were received suggesting editorial changes to the definitions for "flammable range", "public spaces", and "remote group alarms" which are currently in 46 CFR Part 154. These suggested changes have been made in the definitions in this proposal.

Two comments from CTAC were received which suggested that two terms currently in 46 CFR Part 154, "design temperature" and "vapor density", be changed to "minimum allowable temperature" and "design specific gravity", respectively. It was suggested that these are more descriptive terms. The suggestion was not accepted since the present terms are used in the remaining Subparts of Part 154, which are not proposed for revision in this rulemaking. The suggested changes will be considered in a future proposed rulemaking.

One comment from CTAC stated that the current definition in 46 CFR Part 154 of "cargo area" should exclude all ballast tanks, not just those fore and aft. The suggestion was not accepted. The definition is the same as the definition in the New Gas Ship and Existing Gas Ship Codes. Exclusion of wing ballast tanks from the cargo area would be considered under "Equivalents" in proposed § 154.32, but only after a detailed review of the specific containment system design.

One comment from CTAC stated that subparagraph (1) of the current definition in 46 CFR Part 154 of "gas-dangerous spaces" should clarify that ballast tanks and voids in the cargo area are not considered gas-dangerous. This is not correct. In general these spaces are considered gas-dangerous. Specific approval as a gas-safe space is only given after a detailed review of the specific containment system design. The approval would be given under "Equivalents" in proposed § 154.32. The clarification was not accepted.

One comment from CTAC recommended that the current definition in 46 CFR Part 154 of "interbarrier space" be modified to indicate that it exists only when there is a *complete* secondary barrier. This is not correct. The Coast Guard under its "Concept Approval" review procedure has examined containment system designs with partial secondary barriers extending to the tank top. Although not complete, interbarrier spaces do exist. The comment was not accepted.

One commenf from CTAC questioned whether an existing gas ship that currently has a Certificate of Inspection or a Letter of Compliance is considered to have been issued a "document", and therefore would be regulated under proposed § 154.12(b). That is correct provided the Certificate of Inspection or Letter of Compliance was—

1. Issued before the effective date of the final rule for this proposed rulemaking; and

2. Was endorsed for the carriage of a liquefied gas listed in Table 4 of 46 CFR 154.

One comment from CTAC stated that proposed § 154.12(b)(2) was inconsistent with proposed § 154.12(b)(1) since compliance with paragraph (b)(2) would, in certain aspects, cause a ship to no longer be in compliance with the approved construction standard, as required in proposed § 154.12(b)(1). As written, proposed § 154.12(b)(2) requires each existing gas ship to meet the list of proposed standards in § 154.12(e)(1) thru (37). Several of these are upgrades of construction standards. Meeting an upgraded standard does not mean non-compliance with the previously accepted standard. The Coast Guard reviewed the list in proposed § 154.12(e) and did not identify any potential inconsistencies.

One comment from CTAC stated that proposed § 154.19(a)(4), by requiring a ship to meet all of the Existing Gas Ship Code, was inconsistent with proposed § 154.12(b). Proposed § 154.19 states the standards for issuance of an IMO Certificate of Fitness to a U.S. flag liquefied gas carrier. To have an IMO Certificate of Fitness issued, the ship must comply with the appropriate IMO Code. This proposed rulemaking does not require a U.S. flag ship to have an IMO Certificate of Fitness. That is the choice of the ship's owner or operator.

One comment from CTAC was received on proposed § 154.12(e)(7). It stated that all of § 154.519 should be required rather than just the alternative provided in § 154.519(a)(2). The Coast Guard does not agree. Both alternatives are already allowed for existing gas ships in 46 CFR 38.20–1(i). This rulemaking proposes certain additional safety standards for one of the alternatives.

One comment from CTAC was received on proposed § 154.12(e)(23) stating that the Existing Gas Ship Code requires a gas tight door rather than a water tight door. The Coast Guard agrees, but does not know of any gas tightness test that would be practical on a vessel. The water hose test is used as a measure of gas tightness. It is recognized that this is an interior space in or adjacent to the main machinery space, and public comment detailing alternate tightness tests for this isolation door is encouraged.

One comment from CTAC was received on proposed § 154.12(e)(27) concerning the number of independent dry chemical powder units that would be required. It was stated that for ships of cargo capacity between 1000m³ and 2500m³, the Existing Gas Ship Code recommends only one unit if the ship has an existing fixed unit of the required capacity. This is correct as long as the ship already has the fixed unit installed. Ships in this cargo capacity range that are equipped with a portable dry chemical powder unit of 100 kg capacity, must install two fixed dry chemical powder units. The proposed section was revised to agree with IMO.

One comment from CTAC concerned the certification procedures for those existing foreign flag gas ships which have not completed Coast Guard plan review prior to the effective date of the final rule. The comment is discussed in detail below in the section entitled "Existing Gas Vessels that have not Completed Coast Guard Plan Review—Proposed § 154.5 and § 154.12(a)."

Drafting Information

The principle persons involved in drafting this proposal are: Dr. Anthony L. Rowek, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Rulemaking

General

This proposed rulemaking would revise *Subpart A—General* of 46 CFR Part 154. It proposes to revise the applicability of Part 154 to include existing gas ships as well as new gas ships. To accomplish this, one new section would be added, proposed § 154.12 *Existing gas vessel: Endorsements and Requirements*, and two sections revised, proposed § 154.5 *Applicability* (formerly § 154.1) and proposed § 154.22 *Foreign flag vessel: Letter of Compliance endorsement application* (formerly § 154.5). It also proposes to revise several of the remaining sections in Subpart A to clarify their intent and to provide a more logical organization of the subpart. The substance of these sections has not changed. The following table is a cross-reference listing of the proposed regulations to the existing regulations now in *Subpart A* of 46 CFR Part 154.

Proposed regulation (section)	Existing regulation (section)
154.1	154.13.
154.2	New.
154.3	New.
154.5	154.1.
154.7	154.3.
154.9	154.2.
154.12	New.
154.15	154.4.
154.17	154.6(a).
154.19	154.6(b).
154.22	154.5.(a)&(b).
154.24	Footnote to 154.5.
154.30	154.12.
154.32	154.8.
154.34	154.9.
154.36	154.5(c).

The Coast Guard will continue to issue the special "Letter of Compliance" to foreign flag ships meeting all U.S. requirements for the carriage of liquefied gases. This certification is required under 46 U.S.C. 3711 for all foreign flag vessels carrying oil or hazardous materials. The Coast Guard has chosen to continue issuing the special "Letter of Compliance" to maintain continuity in its regulation of hazardous material transportation in the U.S., and to avoid unnecessary confusion for owners and operators of these vessels.

Profile of World's Existing Gas Ship Fleet

An existing gas vessel is defined in the proposed rule as a self-propelled vessel that—

1. Is delivered on or before October 31, 1976; or

2. Is delivered between October 31, 1976 and June 30, 1980 and is not a new gas vessel as defined in § 154.7.

Clarkson's *Liquefied Gas Carrier Register*, 1982, identified 725 gas ships in the world fleet (constructed and on-order). 169 of these are new gas ships, and therefore, are not affected by these proposed regulations. Of the 556 existing gas ships, 202 are foreign flag ships in the Letter of Compliance program, and 12 are U.S. flag ships. (The Letter of Compliance program includes all foreign flag ships that have contacted the Coast Guard concerning obtaining a Letter of Compliance.) The final 342 are existing foreign flag ships that have never contacted the Coast Guard nor carried liquefied gases in U.S. waters. Approximately 290 of these ships are under 3000 m³ cargo capacity and are not expected to enter into U.S. trade.

Of the 12 U.S. flag existing gas ships, 11 meet paragraph 2 of the above definition. 10 of these are approved for the carriage of liquefied natural gas (LNG); the 11th is approved for the carriage of propane and anhydrous ammonia. The one U.S. ship meeting paragraph 1 of the above definition is a combination bulk chemical and liquefied gas ship, with 4 tanks approved for the carriage of butadiene and vinyl chloride monomer.

There are 202 existing gas ships in the Letter of Compliance program. 157 of these ships either currently have a valid Letter of Compliance or have had a Letter of Compliance in the past. 17 other gas ships, although never receiving a Letter of Compliance, have completed

plan review. The remaining 28 ships have not completed plan review.

U.S. Regulations vs. IMO Existing Gas Ship Code

In 1975 IMO adopted the New Gas Ship Code for ships to be built after the effective date of that code. Drawing on the expertise gained in developing this document, and recognizing that certain of these standards could be required of vessels already in service with only minor retrofit, IMO developed the Existing Gas Ship Code. Prior to the development of the Existing Gas Ship Code an international standard for the design of existing gas ships did not exist.

The United States actively participated in the development of the Existing Gas Ship Code and considered adopting that Code in its entirety. If this was implemented, an IMO Certificate of Fitness issued under the Existing Gas Ship Code could then be used to indicate compliance with U.S. regulations during initial certification. This would significantly reduce the plan review procedures and reduce the time it takes an existing foreign flag ship to obtain Coast Guard certification. However, upon comparing the draft Existing Gas Ship Code with 46 CFR Part 38, it was noted that the Code in many areas, most notably cargo tank design and piping system design, was silent or recommended a standard below the corresponding U.S. standard. This occurred because the Existing Gas Ship Code was developed for vessels already in service. To require major structural modification of the cargo containment system or cargo piping system would not be cost effective and could result in taking a vessel out of service. The United States notes these differences at IMO and reserved its position with respect to adopting the entire Existing Gas Ship Code. This proposal would incorporate only those standards that provide an increased level of safety over existing U.S. regulations in Part 38. Examples of these standards are: ship arrangement, inert gas system, and special requirements for LNG boil-off utilization systems. This proposed rulemaking aligns U.S. regulations with the accepted international standard while preserving those areas of our regulations where more stringent safety requirements are needed.

Existing Gas Vessels with Documents—Proposed § 154.12(b) and (c)

A document is defined in this proposed rulemaking as a Certificate of Inspection or a Letter of Compliance.

The proposed rule would require existing foreign flag gas ships issued a Letter of Compliance for the carriage of liquefied gases, prior to the effective date of the final rule, to show compliance with the standards in proposed § 154.124). To facilitate the certification procedure for these ships, it is proposed that the IMO Certificate of Fitness for existing gas ships be submitted to show compliance.

Generally, these ships were accepted on the basis of Coast Guard plan review using the standards in effect at the time of their construction. 46 CFR Part 38 formed the basis for this review. Besides meeting the revised standards, they must continue to meet the design, construction, and equipment standards approved during plan review. An IMO Certificate of Fitness, issued under the Existing Gas Ship Code, is only used as an indication of compliance with the standards proposed in this rulemaking, since as explained earlier the standards used for Coast Guard plan review generally exceed the other standards in the Existing Gas Ship Code.

Compliance with the standards in proposed § 154.12(e) is not required until the ship's current Letter of Compliance expires or is revoked. The expiration date is listed on the Letter of Compliance. After that time, to obtain a Letter of Compliance, the ship's IMO Certification of Fitness must be submitted. The ship is then examined by Coast Guard personnel to determine that—

1. The ship still meets the standards originally approved by the Coast Guard; and

2. The ship meets the standards if proposed § 154. 12(e).

Upon a satisfactory examination, the Coast Guard reissues the ship a Letter of Compliance endorsed for the carriage of those liquefied gases on the previous Letter of Compliance.

Major modifications or alterations, or authorization to carry a cargo other than the ones listed on the former Letter of Compliance, must be done in accordance with the regulations in 46 CFR Part 154. This is in keeping with the Coast Guard's past policy, as stated in 46 CFR 30.01–10, to use, insofar as possible, new construction standards for major vessel conversions. Classification Society certification that the ship complies with the appropriate sections of the New Gas Ship Code is generally acceptable.

Existing Gas Vessels Without Documents that have Completed Coast Guard Plan Review—Proposed § 154.12(d).

The proposed rule would treat ships that have completed Coast Guard plan review for the carriage of liquefied gases prior to the effective date of the final rule, but have not undergone a satisfactory Coast Guard examination, nor received a Letter of Compliance, in a manner similar to those ships previously issued a Letter of Compliance. These ships must possess a letter from the Coast Guard indicating that review of the ship's plans for carriage of liquefied gases is complete or that the ship's IMO Certificate of Fitness, endorsed for the carriage of liquefied gases, is acceptable.

Briefly, to obtain a Letter of Compliance for the carriage of liquefied gases these ships must—

1. Meet the standards under which they were originally reviewed; normally accomplished by continuing to meet the Coast Guard approved plans for the ship;

2. Meet the standards proposed in this rulemaking, indicated by submitting to the Coast Guard a valid IMO Certificate of Fitness; and

3. Undergo a satisfactory Coast Guard examiniation the first time they call at a U.S. port to confirm that they meet the standards described above.

These ships are not required to meet the design, construction, and equipment standards in Subpart C of Part 154, nor need they undergo plan review— again. Ships that submitted an IMO Certificate of Fitness in lieu of plan review must continue to meet the standards under which the certificate was issued.

Existing Gas Vessels that have not Completed Coast Guard Plan Review—Proposed § 154.5 and § 154.12(a)

The proposed rule would require that existing gas ships, that have not completed Coast Guard plan review prior to the effective date of the final rule, meet the same standards as new gas ships, i.e., 46 CFR Part 154. Review and certification procedures are identical to those for new gas ships. Under no circumstances would an IMO Certificate of Fitness, issued under the Existing Gas Ship Code, be acceptable for certification of these ships. This is explained in detail in this preamble in the paragraphs entitled "U.S. Regulations vs. IMO Existing Gas Ship Code' and "Plan Review."

As discussed earlier, there are approximately 28 ships currently in the Letter of Compliance program in this

category. The extent of plan review completed and the date of their last contact with the Coast Guard vary. Many of these ships have only made initial contact with the Coast Guard. Generally, most have shown no interest in completing plan review in the past 5–7 years.

All existing gas ships will have the time period between publication of this proposed rulemaking and the effective date of the Final Rule to complete plan review. The Coast Guard expects this to be approximately 9–12 months. As a practical matter, unless plan review is essentially complete prior to the publication of this NPRM, it is unlikely that plan review can be completed by the effective date of the final rule. Owners desiring to complete plan review for future U.S. trade are encouraged to contact Commandant (G-MTH), as soon as possible, to determine the outstanding plan review items.

Finally, once plan review is completed, there is no time limitation in the proposed rulemaking for the ship to call at a U.S. port and undergo a Coast Guard examination for issuance of a Letter of Compliance.

Plan Review

The proposed rulemaking would significantly reduce the Coast Guard's plan review procedure for existing gas ships. It does this by using an IMO Certificate of Fitness in lieu of plan review as evidence of compliance with—

1. The standards of this proposed rulemaking; and

2. For existing gas ships that have not completed plan review prior to the effective date of the Final Rule, the new gas ship standards in 46 CFR Part 154.

Presently, all existing gas ships undergo Coast Guard plan review unless they submit an IMO Certificate of Fitness under the New Gas Ship Code. All areas of the cargo containment system are reviewed using current U.S. standards. This procedure takes approximately ¼–½ man year per ship to perform. The exact time depends on the amount and quality of the information initially submitted, and the extent of correspondence needed to verify compliance with U.S. requirements.

To facilitate the certification procedure for existing foreign flag ships, and to reduce the expected time period between contact and Coast Guard certification, the Coast Guard proposes to use the IMO Certificate of Fitness in lieu of plan review, whenever possible. For existing ships having a Letter of Compliance, or a letter from the Coast Guard indicating that plan review is complete, an IMO Certificate of Fitness, issued in accordance with the Existing Gas Ship Code, would be adequate indication of compliance with the proposed standards in this rulemaking. However, since the Existing Gas Ship Code allows a design, construction and equipment standard lower than that in U.S. regulations for existing ships, sole certification under that code, for ships not previously plan reviewed under 46 CFR Part 38, would allow those ships to be accepted under a standard not currently considered adequate. In order to maintain an acceptable level of safety while still avoiding long delays for certification, it is proposed that existing gas ships that have not completed plan review submit an IMO Certificate of Fitness issued under the New Gas Ship Code as an indication of compliance with current U.S. standards.

Under this procedure plan review would then only be done for those ships whose flag administrations do not issue IMO Certificates of Fitness. These ships would be plan reviewed in a manner similar to that for U.S. flag ships. Each ship owner or operator is encouraged to avoid this detailed, time consuming procedure by obtaining and submitting, if at all possible, the necessary IMO certification.

Evaluation and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under "Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations", (DOT Order 2100.5 of May 22, 1980). A draft evaluation has been prepared and placed in the public docket and may be inspected or copied at the Office of the Marine Safety Counsel, Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The draft evaluation estimates a cost of approximately $681,000 to completely upgrade an affected vessel, assuming that none of the design features required by the proposed standards have previously been installed. A review of the plans of 10 affected U.S. flag vessels which are of similar design, indicates that actual costs for each of these vessels should be under $20,000. For the remaining two affected U.S. vessels it is assumed that the cost would not exceed 50% of the cost of complete conversion, or $340,500 per vessel, making the total estimated cost for U.S. flag vessels $881,000.

There are 202 foreign flag vessels that have applied for or have received Letters of Compliance. Of these 84 already meet the proposed standards and 28 are unlikely to complete the steps necessary to trade at U.S. ports. We expect that the remaining 90 vessels are in various stages of compliance with the proposed standards of this rulemaking since it is likely that many owners of existing gas ships have anticipated the adoption of the Existing Gas Ship Code by their administrations. To determine the extent of compliance for each vessel would require: 1. a review of each vessel's plans on-hand, and 2. contacting each owner to determine what vessel modifications have been made since Coast Guard approval. Since this is impractical, we have assumed that each of the remaining 90 vessels would incur approximately 50% of the total cost of modification under this proposed rulemaking, or $340,500 per vessel. The actual costs could be considerably less, depending on the degree to which these vessels already meet the proposed standards.

Based on these assumptions the economic evaluation for this proposed rulemaking shows that over a 10 year period the proposal would result in the following:

1. A decreased expenditure of approximately $38,000/per year by the federal government, and no significant impact on state and local governments.

2. An expenditure of up to $31.5 million in the two years following the effective date of the regulations by the maritime industry, resulting from the need for ship modifications to meet the internationally accepted safety standards. These costs would be amortized over the remaining useful life of the vessels and would be eventually passed on to the consumer.

3. No significant impact on energy consumption, important materials or employment.

The benefits to the public of the proposed rulemaking include:

1. A consolidation in one part of the design and equipment standards for all liquefied gas ships.

2. The implementation of internationally agreed upon design and equipment safety standards for existing gas ships, which will facilitate vessel movement.

3. A consolidation into one part of the certification procedures for all liquefied gas ships.

4. Improved safety of existing liquefied gas ships.

A quantitative analysis of the safety benefits to the public is difficult to assess due to the excellent safety record of liquefied gas ships. 46 CFR Part 38 was first published in 1966 and was based upon service experience, construction techniques, and technical

expertise at that time. The IMO Existing Gas Ship Code was developed based upon the state-of-the-art for vessels in 1976. During those intervening years, substantial advances in cargo containment system technology and continual examination of potential hazards occurred. Thus, the Existing Gas Ship Code was able to address areas in addition to those in Part 38. The standards proposed in this rulemaking for existing gas ships, having been derived from the Existing Gas Ship Code, should reduce or eliminate these potential hazards. Since liquefied gas vessels have the potential for causing extensive damage and loss of life if a major failure of the cargo containment system were to occur, these improvements have been accepted internationally as benefiting those involved in the bulk shipment of liquefied gases and the communities served by these vessels.

Under the Regulatory Flexibility Act of 1980 "small entities" includes "small businesses" as defined in the Small Business Act:

> A small business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.

No guidelines useful to the marine industry were provided. The Coast Guard is attempting to develop specific guidelines for this determination. Accordingly, the Coast Guard obtained data from the Brookings Institute which broke out by Subject Identification Code (SIC) the size, number of employees, average annual sales, and other economic information about businesses regulated by the Coast Guard. From this information, the Coast Guard determined what the equal market share would be for each SIC area. A business whose actual market share fell below this cut-off was considered a small business. Comparing the groups of small businesses between SIC areas, the Coast Guard found that a general criteria could be used to identify the same group of small businesses within each SIC code. The general criteria defining a small business was:

1. A business with 10 or fewer employees; or

2. A business with annual sales of $1.0 Million or less.

The liquefied gas shipping industry is characterized by single ship companies, with no dominant companies in the field. Using the above criteria of an annual revenue of $1.0 Million or 10 employees, as the upper limit for a small business, the Coast Guard found that there were no small entities that would be affected by these rules. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that these rules, if promulgated, will not have a significant economic impact on a substantial number os small entities.

This proposed rulemaking would have no significant impact on the foreign trade of the United States. All vessels, U.S. or foreign flag, carrying liquefied gases in U.S. waters would be subject to the same standards. While it is possible that some foreign flag vessels would elect to shift trading patterns in lieu of meeting the proposed standards, the standards are based on internationally accepted minimums and the impact is expected to be negligible.

This proposed rulemaking contains information collection and recordkeeping requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (Pub. L. 96-511, 44 USC 3501 et seq) and have been approved by OMB. The section numbers and the corresponding OMB approval number are as follows: Section Numbers—§§ 154.15, 154.22, and 154.34; OMB Approval Number—2115-0113.

List of Subjects in 46 CFR Part 154

Natural gas vessels, Gases, Hazardous materials transportation, Marine safety.

In accordance with the preceding, it is proposed to amend Chapter I of Title 46, Code of Federal Regulations as follows:

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

1. By revising the authority citation for Part 154 to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

2. By revising Subpart A to read as follows:

Subpart A—General

Sec.

154.1 Incorporation by reference.
154.2 Information collection approvals.
154.3 Purpose.
154.5 Applicability.
154.7 Definitions, acronyms, and terms.
154.9 Issuance of documents.
154.12 Existing gas vessel: endorsements and requirements.
154.15 U.S. flag vessel: Endorsement application.
154.17 U.S. flag vessel: Certificate of Inspection endorsement.
154.19 U.S. flag vessel: IMO Certificate issuance.
154.22 Foreign flag vessel: Letter of Compliance endorsement application.
154.24 Foreign flag vessel: IMO Certificate.
154.30 Liquefied gases not included in Table 4.
154.32 Equivalents.
154.34 Special approval: requests.
154.36 Correspondence and vessel information submission.

* * * * *

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

Subpart A—General

§ 154.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division, Washington, D.C. 20593.

(b) The materials approved for incorporation by reference in this part are:

American Bureau of Shipping

Rules for Building and Classing Steel Vessels, 1981

American National Standards Institute

ANSI Z89.1-69 Safety Requirements for Industrial Head Protection

ANSI Z87.1-79 Practice for Occupational and Educational Eye and Face Protection

American Society for Testing and Materials

ASTM A20-78 Steel Plates for Pressure Vessels

International Maritime Organization

Resolution A.328(IX), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975

Code For Existing Ships Carrying Liquefied Gases In Bulk, 1975

Medical First Aid Guide for Use in Accidents Involving Dangerous Goods

Underwriters Laboratories, Inc.

UL No. 783-79 Flashlights and Lanterns, Electric, for Use in Hazardous Locations, Class 1, Groups C and D

§ 154.2 Information collection approvals.

This Part contains information collection requirements which have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. OMB Approval Number 2115–0113 has been assigned. The sections containing information collection requirements are:

(a) Section 154.15
(b) Section 154.22
(c) Section 154.30
(d) Section 154.32
(e) Section 154.34
(f) Section 154.151
(g) Section 154.1801
(h) Section 154.1802
(i) Section 154.1809
(j) Section 154.1810
(k) Section 154.1818
(l) Section 154.1820
(m) Section 154.1846
(n) Section 154.1852
(o) Section 154.1862

§ 154.3 Purpose.

The purpose of this part is to prescribe rules for new and existing gas vessels.

§ 154.5 Applicability.

This part applies to each self-propelled vessel that has on board bulk liquefied gases as cargo, cargo residue, or vapor, except Subpart C does not apply if the vessel meets § 154.12(b), (c), or (d).

§ 154.7 Definitions, acronyms, and terms.

As used in this part:

" 'A' Class Division" means a division as defined in Regulation 3 of Chapter II–2 of the 1974 Safety Convention.

"Accommodation spaces" means public spaces, corridors, lavatories, cabins, offices, hospitals, cinemas, game and hobby rooms, pantries containing no cooking appliances and spaces used in a similar fashion.

"Boiling point" means the temperature at which a cargo's vapor pressure is equal to atmospheric barometric pressure.

"Breadth" (B) is the maximum width of the vessel in meters measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material.

"Cargo area" means that part of the vessel that contains the cargo containment system, cargo pump rooms, cargo compressor rooms, and the deck areas over the full beam and length of the vessel above them, but does not include the cofferdams, ballast spaces or void spaces at the after end of the aftermost hold space or the forward end of the forwardmost hold space.

"Cargo containment system" means the arrangement for containment of cargo including a primary and secondary barrier, associated insulation and any intervening spaces and adjacent structure that is necessary for the support of these elements.

"Cargo service space" means a space within the cargo area that is more than $2m^2$ ($21.5 ft.^2$) and used for work shops, lockers, or store rooms.

"Cargo tank" means the liquid tight shell that is the primary container of the cargo.

"Cofferdam" means the isolating space between two adjacent steel bulkheads or decks, which could be a void space or ballast space.

"Contiguous hull structure" includes the inner deck, the inner bottom plating, longitudinal bulkhead plating, transverse bulkhead plating, floors, webs, stringers, and attached stiffeners.

"Control space" means those spaces in which the vessel's radio or main navigating equipment or the emergency source of power is located or in which the fire control equipment, other than firefighting control equipment under §§ 154.1140 to 154.1170, is centralized.

"Design temperature" means the minimum cargo temperature the Coast Guard allows for loading, unloading or carriage.

"Design vapor pressure" (P_o) means the maximum gauge pressure at the top of the cargo tank for the design of the cargo tank.

"Document" means a Certificate of Inspection for a U.S. flag vessel or a Letter of Compliance for a foreign flag vessel.

"Existing gas vessel" means a self-propelled vessel that—

(a) is delivered on or before October 31, 1976; or

(b) is delivered between October 31, 1976 and June 30, 1980, and is not a new gas vessel as defined in this section.

"Flammable cargoes" means the following liquefied gases from Table 4:

Acetaldehyde
Butadiene
Butane
Butylene
Dimethylamine
Ethane
Ethylamine
Ethyl chloride
Ethylene
Ethylene oxide
Methane (LNG)
Methyl acetylene-propadiene mixture
Methyl bromide
Methyl chloride
Propane
Propylene
Vinyl chloride

"Flammable range" means the concentrations of vapor in air between the minimum (the lower flammable limit or lower explosive limit) and maximum (the upper flammable limit or upper explosive limit) concentrations that will burn.

"Gas-dangerous space" means the following spaces:

(a) A space in the cargo area without arrangements to provide a safe atmosphere at all times.

(b) An enclosed space outside the cargo area through which any piping that may contain liquid or gaseous cargo passes, or within which such piping terminates, without arrangements to prevent gas from escaping into the space.

(c) A cargo containment system and cargo piping.

(d) A hold space where cargo is carried in a cargo containment system that is required by this part to have a secondary barrier.

(e) A hold space where cargo is carried in a cargo containment system that is not required by this part to have a secondary barrier.

(f) A space separated from the hold space in subparagraph (4) of this definition by a single gastight boundary.

(g) A cargo pumproom and a cargo compressor room.

(h) A zone on the weather deck, or semi-enclosed space on the weather deck, within 3.05m (10 ft.) of any cargo tank outlet, gas or vapor outlet, cargo pipe flange, cargo valve, or of entrances and ventilation openings to a cargo pump room or a cargo compressor room.

(i) The weather deck over the cargo area and 3.05m (10 ft.) forward and aft of the cargo area on the weather deck to 2.4m (8 ft.) above the weather deck.

(j) A zone within 2.4m (8 ft.) of the outer surface of a cargo containment system where the surface is exposed to the weather.

(k) An enclosed or semi-enclosed space in which there is piping containing cargo, except those—

(1) with gas sampling lines for gas detection equipment under § 154.1350(n); or

(2) in which boil-off gas is used as fuel under § 154.703.

(l) A space for storage of cargo hoses.

(m) An enclosed or semi-enclosed space having an opening into any gas-dangerous space or zone.

"Gas-safe space" means a space that is not a gas-dangerous space.

"Hold space" means the space enclosed by the vessel's structure in which there is a cargo containment system.

"IMO" stands for the International Maritime Organization.

"IMO Certificate" means a Certificate of Fitness for the Carriage of Liquefied Gases in Bulk issued under the IMO—

(a) *Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*, adopted November 12, 1975 by Assembly Resolution A.328(IX), as amended;

(b) *Code For Existing Ships Carrying Liquefied Gases In Bulk*, adopted November 12, 1975, as amended; or

(c) *Recommendations Concerning Ships Not Covered By The Code For The Construction And Equipment Of Ships Carrying Liquefied Gases In Bulk (Resolution A.328(IX))*, adopted November 12, 1975 by Assembly Resolution. A.329(IX).

"Independent tank" is a cargo tank that is permanently affixed to the vessel, is self-supporting, and is not part of the hull or essential to the strength or integrity of the hull.

"Independent tank type A" is an independent cargo tank designed primarily using classification society classical ship structural analysis procedures.

"Independent tank type B" is an independent cargo tank designed from model tests, refined analytical tools and analysis methods to determine stress levels, fatigue life and crack propagation characteristics.

"Independent tank type C" (pressure tank) is an independent cargo tank meeting pressure vessel criteria where the dominant stress producing load is design vapor pressure.

"Insulation space" means a space, that could be an interbarrier space, occupied wholly or in part by insulation.

"Integral tank" means a cargo tank that is a structural part of the vessel's hull and is influenced in the same manner and by the same loads that stress the adjacent hull structure.

"Interbarrier space" means the space between a primary and a secondary barrier with or without insulation or other material.

"Length" (L) is ninety-six percent of the total length in meters on a waterline at eighty-five percent of the least molded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, whichever is greater. In vessels having a rake of keel, the waterline is parallel to the design waterline.

"Letter of Compliance" means a letter issued by the Coast Guard to a foreign flag vessel for compliance with Sec. 5(8) of the Port and Tanker Safety Act of 1978 (92 Stat. 1486; 46 U.S.C. 391a).

"Liquefied gas" means a cargo having a vapor pressure of 172 kPa (25 psia) or more at 37.8°C (100°F).

"MARVS" stands for the Maximum Allowable Relief Valve Setting.

"Membrane tank" is a cargo tank that is not self-supporting and consists of a thin layer (membrance) supported through insulation by the adjacent hull structure.

"New gas vessel" means a self-propelled vessel that—

(a) is constructed under a building contract awarded after October 31, 1976;

(b) in the absence of a building contract, has the keel laid or is at a similar stage of construction after December 31, 1976;

(c) is delivered after June 30, 1980; or

(d) has undergone a major conversion for which—

(1) the building contract is awarded after October 31, 1976;

(2) in the absence of a building contract, conversion is begun after December 31, 1976; or

(3) conversion is completed after June 30, 1980.

"Permeability of a space" means the ratio of the volume of water within a space to the total volume of the space.

"Primary barrier" means the inner boundary that contains the cargo when the cargo containment system includes two boundaries.

"Process pressure vessel" means a pressure vessel that is used in a reliquefaction, cargo heating, or other system that processes cargo.

"Public spaces" means those portions of the accommodations that are used as passageways, foyers, dining rooms, lounges and similar permanently enclosed communal spaces.

"Remote group alarm" means an audible and visual alarm that alerts when an alarm condition exists but does not identify that condition.

"Secondary barrier" means the liquid resisting outer boundary of a cargo containment system when the cargo containment system includes two boundaries.

"Semi-membrane tank" is a cargo tank that is not self-supporting when loaded and consists of flat surfaces, supported through insulation by the adjacent hull structure, and shaped corners that connect the flat surfaces that can expand and contract due to thermal, hydrostatic, and pressure loadings.

"Service space" means a space outside the cargo area that is used for a gallery, pantry containing cooking appliances, locker or store room, workshop except those in machinery spaces, and similar spaces and trunks to those spaces.

"Shut-off valve" is a valve that closes a pipeline and provides nominal metal to metal contact between the valve operating parts, including the disc and gate, and the valve body.

"Specific gravity" [ ] means the ratio of the density of the cargo at the design temperature to the density of water at 4°C (39°F).

"Tank cover" is the protective structure for those parts of the cargo containment system that protrude through the weather deck, and serves both to protect those parts from damage and to provide continuity to the deck structure.

"Tank dome" means the uppermost portion of the cargo tank. For below deck cargo containment systems, it means the uppermost portion of the cargo tank that protrudes through the weather deck or through the tank cover.

"Toxic cargoes" means the following liquefied gases from Table 4:

Acetaldehyde
Ammonia, Anhydrous
Dimethylamine
Ethylamine
Ethyl chloride
Ethylene oxide
Methyl bromide
Methyl chloride
Sulfur dioxide
Vinyl chloride

"Vapor density" means the ratio of the weight of vapor to the weight of an equal volume of dry air at standard conditions of temperature and pressure.

"Vapor pressure" means the absolute equilibrium pressure of the saturated vapor above the liquid (kPa(psia)) at a specific temperature.

"Void space" means an enclosed space in the cargo area outside of the cargo containment system, except a hold space, ballast space, fuel oil tank, cargo pump or compressor room, or any space used by personnel.

"1974 Safety Convention" stands for the International Convention on Safety of Life at Sea, 1974, done at London, November 1, 1974.

§154.9 Issuance of documents.

The Coast Guard issues an endorsed Certificate of Inspection to a U.S. flag gas vessel or an endorsed Letter of Compliance to a foreign flag gas vessel that meets this part.

§154.12 Existing gas vessel: endorsements and requirements.

(a) Except existing gas vessels under paragraph (b), (c), or (d) of this section, an existing gas vessel must meet Subpart C of this Part if the owner desires a document endorsed for the carriage of a cargo listed in Table 4.

(b) If an existing gas vessel is issued a document by the Coast Guard before (*effective date of the final rule is inserted*), that is endorsed for the carriage of a cargo listed in Table 4, and the owner desires the same endorsement on a reissued document, the vessel must—

(1) continue to meet the same design and construction standards under which the Coast Guard issued the original document; and

(2) meet paragraph (e) of this section;

(c) If an existing gas vessel is issued a document by the Coast Guard before (*effective date of the final rule is inserted*), that is endorsed for the carriage of a cargo listed in Table 4, and the owner desires an endorsement for a different cargo listed in Table 4, the vessel must—

(1) continue to meet the same design and construction standards under which the Coast Guard isued the original document;

(2) meet paragraph (e) of this section;

(3) meet Subpart D for the different cargo; and

(4) meet any additional requirements of this part that the Commandant (G-MTH) determines to be necessary for safety.

(d) If an existing gas vessel does not meet paragraph (b) or (c) of this section and the owner desires a document endorsed for the carriage of a cargo listed in Table 4, the vessel must—

(1) have a letter from the Coast Guard dated before (*effective date of the final rule is inserted*) stating that—

(i) review of the vessel's plans for carriage of that cargo is complete; or

(ii) the vessel's IMO Certificate endorsed for the carriage of that cargo is accepted;

(2) meet the plans that were reviewed and marked "Examined" or "Approved" by the Coast Guard, or meet the standards under which the IMO Certificate was issued;

(3) meet paragraph (e) of this section; and

(4) meet any additional requirements of this part that the Commandant (G-MTH) determines to be necessary for safety.

(e) Each existing gas vessel under paragraphs (b), (c), or (d) must meet the requirements in each of the following:

(1) Section 154.310(d) and (e).

(2) Section 154.320(b) and (c).

(3) Section 154.330(a) through (e).

(4) Section 154.340(d).

(5) Section 154.345(a), (b)(1) through (b)(5), (b)(7) and (c).

(6) Section 154.476(a).

(7) Section 154.519(a)(2).

(8) Section 154.534.

(9) Section 154.538.

(10) Section 154.540(c) and (d).

(11) Section 154.556.

(12) Section 154.558.

(13) Section 154.560.

(14) Section 154.562.

(15) Section 154.703.

(16) Section 154.705.

(17) Section 154.706.

(18) Section 154.707.

(19) Section 154.708.

(20) Section 154.709.

(21) Section 154.904.

(22) Section 154.906.

(23) Section 154.908(a), unless the space is separated from the accommodation, service or control space by a steel door that—

(i) Is watertight when tested with a fire hose at not less than 207 kPa gauge (30 psig);

(ii) Has a means to self-close without latches or other devices that hold it open; and

(iii) Has an audible and visual alarm on both sides of the door which is actuated when the door is open.

(24) Section 154.910.

(25) Section 154.912.

(26) Sections 154.1110 through 154.1130, except §§ 154.1115(b), 154.1120(b), and 154.1125(c), and (f).

(27) Section 154.1145, except an existing gas vessel with a cargo carrying capacity of less than 2500 m^3 (88,200 ft^3) may have only one self-contained dry chemical storage unit, if that unit—

(i) Is installed before (*effective date of the final rule is inserted*); and

(ii) Has the capacity to meet §§ 154.1145(d) and (e), and 154.1170(e).

(28) Section 154.1150(a) and (b).

(29) Section 154.1155.

(30) Section 154.1160.

(31) Section 154.1165 (a), (b), (d), and (f).

(32) Section 154.1170 (b) through (f).

(33) Section 154.1200 (a), (b)(1) and (b)(2).

(34) Section 154.1205(f).

(35) Section 154.1325.

(36) Section 154.1335(e).

(37) Section 154.1350 (u), (e), (f), (i), and (o).

§ 154.15 U.S. flag vessel: endorsement application.

(a) A person who desires the endorsement under § 154.1801 for a U.S. flag vessel must submit an application for an endorsement of the vessel's Subchapter D Certificate of Inspection under the procedures in § 91.55-15 of this chapter.

(b) The person requesting an endorsement under paragraph (a) of this section must submit to the Coast Guard if requested—

(1) calculations for hull design required by § 154.215;

(2) the plans and information listed in §§ 54.01-18, 56.01-10, 91.55-5 (e), (b), (d), (g), and (h), and 110.25-1 of this chapter;

(3) plans for the dry chemical supply and distribution systems, including the controls; and

(4) any other vessel information, such as plans, design calculations, test results, certificates, and manufacturer's data, needed to determine whether or not the vessel meets the standards of this part.

§ 154.17 U.S. flag vessel: Certificate of inspection endorsement.

The Certificate of Inspection for a U.S. flag vessel allowed to carry a liquefied gas listed in Table 4 has the following endorsement for each cargo with its corresponding carriage requirement data inserted:

Inspected and approved for the carriage of ——— at a maximum allowable relief valve setting of ——— kPa gauge (———psig) with an F factor of ———, a maximum external pressure of ——— kPa gauge (——— psig), a minimum service temperature of ——— °C (———°F), and a maximum specific gravity of ———. Hull type ———.

§ 154.19 U.S. flag vessel: IMO Certificate issuance.

(a) The Coast Guard Officer in Charge, Marine Inspection, issues an IMO Certificate to a U.S. flag vessel when requested by the owner or representative, if—

(1) the vessel meets the requirements of this part; and

(2) it is a new gas vessel, it meets the IMO *Resolution A.328(IX), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*, 1975; or

(3) it is an existing gas vessel, it meets the IMO *Code For Existing Ships Carrying Liquefied Gases in Bulk*, 1975.

(b) The IMO Certificate expires on the same date that the vessel's Certificate of Inspection expires.

§ 154.22 Foreign flag vessel: Letter of Compliance endorsement application.

(a) A person who desires an endorsed Letter of Compliance to meet § 154.1802(a) for a foreign flag vessel, whose flag administration issues IMO Certificates, must submit to the Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street SW, Washington, D.C. 20593, an application that includes the following:

(1) The vessel's valid IMO Certificate.

(2) A description of the vessel.

(3) Specifications for the cargo containment system.

(4) A general arrangement plan of the vessel.

(5) A midship section plan of the vessel.

(6) Schematic plans of the liquid and vapor cargo piping.

(7) A firefighting and safety plan.

(8) If the applicant is requesting an endorsement for the carriage of ethylene oxide, a classification society certification that the vessel meets § 154.1725(a) (4), (5) and (7).

(9) If the vessel is a new gas vessel, or an existing gas vessel that does not meet § 154.12 (b), (c), or (d)—

(i) A certification from a classification society that the vessel—

(A) Has enhanced grades of steel meeting §§ 154.170 (b)(1) and (b)(2) for crack arresting purposes in the deck stringer, sheer strake, and bilge strake; and

(B) Meets § 154.701, or if the vessel carries methane, meets § 154.703, by having the capability of cargo tank pressure and temperature control without venting; and

(ii) The vessels's valid SOLAS Cargo Ship Safety Construction Certificate and Cargo Ship Safety Equipment Certificate.

(10) Any additional plans, certificates, and information needed by the Commandant (G-MTH) to determine whether or not the vessel meets this part.

(b) A person who desires an endorsed Letter of Compliance to meet § 154.1802(b) for a foreign flag vessel, whose flag administration does not issue IMO Certificates, must submit to the Commandant (G-MTH) the plans, calculations, and information under § 154.15(b).

§ 154.24 Foreign flag vessel: IMO Certificate.

(a) An IMO Certificate issued under the IMO *Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*, Resolution A.328(IX), is usually sufficient evidence of compliance with this part for the Coast Guard to endorse a foreign flag vessel's Letter of Compliance with the name of each cargo in Table 4 that is listed on the IMO Certificate, if—

(1) The information listed in item 3 of the IMO Certificate shows that—

(i) The design ambient temperatures meet §§ 154.174 and 154.176;

(ii) The cargo tank design stress factors and resulting MARVS of independent tanks type B or C meet §§ 154.447 or 154.450; and

(ii) The cargo tank MARVS of a type IIPG ship meets § 154.215(c).

(b) If a foreign flag existing gas vessel meets § 154.12(b), (c) or (d), the vessel's IMO Certificate, as defined in § 154.7, is usually sufficient evidence of compliance with the requirements of § 154.12(e) for the Coast Guard to endorse the Letter of Compliance with the name of each cargo in Table 4 that is listed on the IMO Certificate.

(c) An IMO Certificate issued under the IMO *Code for Existing Ships Carrying Liquefied Gases in Bulk* is not acceptable evidence of compliance with the requirements of this part for the endorsement of a Letter of Compliance of a foreign flag existing gas vessel that does not meet § 154.12(b), (c), or (d).

§ 154.30 Liquefied gases not included in Table 4.

(a) A liquefied gas not appearing in Table 4 must be specially approved by the Commandant (G–MTH) for carriage in bulk in U.S. waters.

(b) A person who desires to ship a liquefied gas in bulk that is not listed in Table 4, must submit to the Commandant (G-MTH) a completed form CG–4355. This form may be obtained from Commandant (G-MTH) or any Officer in Charge, Marine Inspection (OCMI).

(c) The Commandant (G-MTH) notifies the submitter by letter whether or not the liquefied gas is specially approved for carriage in bulk in U. S. waters and the minimum requirements for that carriage. If the liquefied gas is not specially approved, the reasons why the special approval is not granted are included.

§ 154.32 Equivalents.

(a) A vessel that fails to meet a certain standard in this part for an endorsement on a Certificate of Inspection or Letter of Compliance may meet an alternate standard if the Commandant (G-MTH) finds that the alternate standard provides an equivalent or greater level of protection for the purpose of safety.

(b) The Commandant (G-MTH) considers issuance of a finding of equivalence to a standard required by this part if the person requesting the finding submits a written application to the Commandant (G-MTH) that includes—

(1) A detailed explanation of the vessel's characteristics that do not meet the requirements in this part; and

(2) An explanation of how each substituted standard enables the vessel to meet a level of safety equivalent to or greater than the standard in this part.

(c) Operational methods or procedures may not be substituted for a particular fitting, material, appliance, apparatus, item or type of equipment, required in this part.

§ 154.34 Special approval: requests.

Each request for special approval must be in writing to the Commandant (G-MTH) and mailed as follows: Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street SW, Washington, D.C. 20593.

§ 154.36 Correspondence and vessel information: submission.

Correspondence to the Coast Guard and all vessel information submitted to the Coast Guard must be in English, except—

(a) IMO Certificates may be in French; and

(b) SOLAS Certificates may be in the official language of the flag administration.

3. By revising § 154.340(b) introductory text to read as follows:

§ 154.340 Access to tanks and spaces in the cargo area.

* * * * *

(b) Each access into and through a void space or other gas-dangerous space in the cargo area, except spaces under subparagraph (6) of the definition for "gas-dangerous space" in § 154.7, must—

* * * * *

4. By revising § 154.530(a) introductory text to read as follows:

§ 154.530 Valves: cargo tank MARVS 69 kPa gauge (10 psig) or lower.

(a) Except connections for tank safety relief valves and except for liquid level gauging devices other than those under §§ 154.536 and 154.1310, liquid and vapor connections on a cargo tank with a MARVS of 69 kPa (10 psig) or lower must have shut-off valves, that—

* * * * *

5. By revising § 154.544(a) to read as follows:

§ 154.544 Quick-closing shut-off valves.

* * * * *

(a) Be a shut-off valve:

* * * * *

6. By revising § 154.1802 (a)(2) and (b)(2) to read as follows:

§ 154.1802 Certificates, letters, and endorsements: Foreign flag vessels.

(a) * * *

(2) Special approval under § 154.30.

(b) * * *

(2) Special approval under § 154.30.

* * * * *

L.N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

March 11, 1985.

[FR Doc. 85–6100 Filed 3–13–85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-1145, Phase 1, FCC 85-69]

Investigation of Access and Divestiture Related Tariffs

Correction

In FR Doc. 85-5515 beginning on page 9462 in the issue of Friday, March 8, 1985, make the following corrections:

1. On page 9466, third column, line sixteen, "April 14" should read "April 4".

2. On page 9467, second column, paragraph 29, ninth line, "April 14, 1985" should read "April 4, 1985".

BILLING CODE 1505-01-M

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47 CFR Part 76

[MM Docket No. 85-30; RM-4875]

Adding Ashland, KY to the Charleston-Huntington, WV Television Market

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Table of Major Television Markets by including Ashland, Kentucky, in the Charleston-Huntington, West Virginia, hyphenated market in response to a Petition for Rule Making filed by Tri-State Family Broadcasting, Inc.

DATE: Comments must be filed on or before April 29, 1985, and reply comments must be filed on or before May 14, 1985.

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

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Television broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 76.51, major television markets, (Charleston-Huntington, West Virginia, Ashland, Kentucky); MM Docket No. 85-30, RM-4875.

Adopted: February 1, 1985.
Released: March 8, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the petition for rule making filed by Tri-State Family Broadcasting, Inc., licensee of television Station WTSF (TV), Channel 61, in Ashland, Kentucky, requesting that the Commission revise its list of the top 100 television markets set forth in § 76.51 of its cable television rules by including Ashland, Kentucky, in the market now designated Charleston-Huntington, West Virginia (#36). Tri-State specifically proposes a Charleston-Huntington, West Virginia-Ashland, Kentucky, hyphenated market designation.

2. Tri-State argues that Ashland should be added to the Charleston-Huntington market designation due to the relative location of the communities and the mutuality of coverage from their respective stations. Tri-City states that Huntington is 9.5 miles from Ashland and is completely within Ashland's 35 mile zone (See § 76.5 of the Commission's Rules) while Charleston is located 42.2 miles from Huntington and 55.4 miles from Ashland. Tri-City argues that the distance between Ashland to Charleston and Huntington distinguishes the instant case from *Television Muscle Shoals*, 48 R.R. 2d 1191 (1980) where the distances were much greater. Tri-City further argues that it is not a requirement that all of the designated communities in a hyphenated market be within one another's 35 mile specified zone.

3. Tri-City claims that Ashland is within the Grade B contours of all of the commercial television stations licensed to Charleston and Huntington. The Grade B contours of all Charleston stations encompass Huntington and vice versa. However, WTSF's predicted Grade B encompasses all of Huntington and most of Charleston. Tri-City asserts that the overlapping signal coverage of the stations in the Tri-City area is an indication that the stations do and logically can expect to obtain revenue from all three cities, citing *Melbourne, Florida*, 49 FR 7414, published February 29, 1984. According to Tri-City, the geographic proximity and economic interdependence of these cities makes them a single unified population center in which all television stations in the three communities are mutually dependent for economic support. Tri-City states that Ashland is considered part of the Charleston-Huntington television market by Arbitron and the Census Bureau, and that Rand-McNally treats Charleston-Huntington and Ashland as a unified demographic and economic area. Tri-City further states that program syndicators regard Charleston-Huntington and Ashland as a single market for purposes of program fees and exclusivity. Tri-City points out that while Ashland is not included in the Charleston-Huntington market in § 76.51 syndicators accord the same rate to WTSF as to the Charleston-Huntington stations. Tri-City also notes under § 76.61 of the Commission's Rules, Charleston-Huntington stations are entitled to must-carry rights on the Ashland cable system, but WTSF is not entitled to reciprocal rights. Tri-City argues that cable penetration is the critical factor in the market because the rough terrain results in unacceptable over-the-air reception. Consequently, Tri-City's market share is reduced and its financial condition is unstable because of its inability to compete in the market or reach Charleston viewers via cable.

Discussion

4. Section 76.51 of the Commission's Rules (the major market list) is used to determine, among other things, the mandatory coverage obligations of the cable systems operating within a particular market. The Commission originally based its major market list on Arbitron's 1970 prime time household ranking. *Cable Television Report and Order*, 36 F.C.C. 2d 143 (1972). Regarding "hyphenated markets," the Commission noted that certain markets were characterized by more than one major population center supporting all communities in the market but with different stations licensed to different cities within the market. See, *New York, New York-Linden-Paterson, New Jersey and Newark, New Jersey*, 47 F.C.C. 2d 752 (1974).

5. The question of hyphenation depends on whether Charleston-Huntington and Ashland constitute a single market. Tri-City has made a prima facia showing that Ashland is within the Grade B contours of all of the television stations licensed to Huntington and Charleston and that WTSF's predicted Grade B encompasses all of Huntington and most of Charleston. Furthermore, the stations allegedly rely on all three communities for advertising revenue, and business and advertisers in the area consider Ashland as a part of their natural market.

6. In light of the above showing, the Commission solicits comments on the proposal to amend § 76.51 by adding Ashland to the Charleston-Huntington designation as set forth below. Accordingly, the Commission proposes to amend the Table of Major Television Markets, §76.51 of the Commission's Rules as follows:

Present	Proposed
#36 Charleston-Huntington, West Virginia.	#36 Charleston-Huntington, West Virginia—Ashland, Kentucky.

8. Authority for the action taken herein is contained in sections 4(i), and 303 (g) and (r) of the Communications Act of 1934, as amended.

9. Interested parties may file comments on or before April 29, 1985, and reply comments on or before May 14, 1985, and are advised to read the Appendix for the proper procedures.

10. The Commission has certified that the provisions of the Regulatory Flexibility Act do not apply to rule making proceedings to amend §76.51 of the Commission's Rules. See *Melbourne, Florida*, 50 FR 2565, published January 17, 1985.

11. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve specific market designations. An *ex parte* contract is a message (spoken or written) concerning the merits of appending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s), who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expects to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to appply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-6052 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 84-960; RM-4781, RM-4784]

Allocation of Additional Frequencies for the Amateur Radio Service, the Amateur Civil Emergency Service and the Amateur Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of time to file Reply Comments.

SUMMARY: The period of time in which to file reply comments is hereby extended in this proceeding concerning amendment of the Commission's rules to implement allocation of additional frequencies for three Amateur Services. This action is necessary as a result of administrative backlog.

DATE: Interested parties may file reply comments on or before March 12, 1985.

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

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Amendment of Part 97 of the Commission's rules to implement allocation of additional frequencies for the Amateur Radio Service, the Amateur Civil Emergency Service and the Amateur Satellite Service, PR Docket No. 84-960; RM-4781, RM-4784.

Adopted: March 6, 1985.

Released: March 7, 1985.

By the Chief, Private Radio Bureau.

1. In the *Notice of Proposed Rule Making* in this matter, 49 FR 40611 (October 17, 1984), the Commission set deadlines of December 17, 1984 for comments and January 16, 1985 for reply comments.

2. On January 16, 1985, Corwin D. Moore, Jr., filed a *Petition for Extension of Time to File Reply Comments* in this proceeding. This request for extension of time is granted due to administrative backlog in our Dockets Branch.

3. It is ordered, that the date through which interested persons may file reply comments is extended until March 12, 1985.[1]

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

[1] For good cause shown, the procedural requirements of 47 CFR 1.46(b) and 1.415(e) are waived, and this *Petition* is accepted for filing.

Federal Communications Commission

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 85-6053 Filed 3-13-85; 8:45 am]

BILLING CODE 8712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 533

[GSAR Notice No. 5-82g]

Disputes and Appeals

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments of a proposed change to the General Services Administration Acquisition Regulation (GSAR), which supplements FAR Part 33, Protests, Disputes and Appeals, by providing agency procedures for processing protests that are filed with the General Accounting Office (GAO) or with the General Services Administration Board of Contract Appeals. The proposed change also incorporates the contents of Acquisition Circular AC-84-8, regarding the arrangement of documents in appeal files, into the regulation.

DATES: Comments are due in writing not later than April 15, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4027, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 523-4754.

SUPPLEMENTARY INFORMATION: The proposed rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The General Services Administration (GSA) certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subject in 48 CFR Part 533

Government procurement.

Dated: January 30, 1985.

Richard H. Hopf, III,

Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 85-6150 Filed 3-13-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status and Critical Habitat for the Bay Checkerspot (Butterfly Euphydryas Editha Bayensis)

AGENCY: Fish and Wildlife Services, Interior.

ACTION: Reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period on the proposed determination of endangered status and critical habitat for the bay checkerspot butterfly *(Euphydryas editha bayensis)* is reopened. This butterfly was historically known from the San Francisco Peninsula and outer coast range to the south and east of the peninsula. Of the 16 known colonies, only five remain. The reopening of the comment period will allow any additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal, which was extended to accommodate a public hearing on November 13, 1984 (49 FR 43076), is reopened. The comment period, which closed on November 23, 1984, now closes May 17, 1985.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the address above or 503/231-6131 (FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot butterfly has suffered a reduction in number and range. Of 16 known colonies, five remain. Habitat alterative has resulted from highway and subdivision construction, overgrazing by livestock, and introduction of non-native plants. A proposal of endangered status and critical habitat for the butterfly was published in the **Federal Register** on September 11, 1984 (49 FR 35665) and a public hearing held on November 13, 1984 (49 FR 43076).

On February 12, 1985, counsel for United Technologies Corporation (UTC) requested that the comment period for this proposed rule be reopened. Because the UTC request raises significant issues concerning the proposal and because other parties have also indicated a desire to present significant additional comments on the proposal, the Service has decided to reopen the comment period. Written comments may now be submitted until May 17, 1985, to the Service Office in the Addresses section. Depending on the nature of the comments received, a further extension of the comment period may be considered.

Author

The primary author of this notice is Ms. Carolyn A. Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-611).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish and Marine mammals, Plants (agriculture).

Dated: March 7, 1985.

William F. Shake,

Acting Assistant Regional Director-Federal Assistance.

[FR Doc. 85-6077 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting; Proposed 1985-86 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Service proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the contiguous

United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1985–86. The Service annually prescribes migratory bird hunting regulations. These regulations provide hunting opportunity, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed regulatoins frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 20, 1985; for other early season proposals (seasons opening before October 1) on July 15, 1985; and for late season proposals (seasons opening on or about October 1 or later) on August 19, 1985. Public Hearings: Early Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 20, 1985, at 9 a.m.; Late Season Regulations—August 1, 1985, at 9 a.m. Both public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets, NW., Washington, D.C.

Meetings: March 17, 1985

—Atlantic Flyway Council, 10 a.m.
—Mississippi Flyway Council, 9 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3 p.m.

ADDRESSES: Council meetings will be held at The Shoreham Hotel, Washington, D.C., as follows:

Atlantic Flyway Council, Executive Room, Upper Lobby Level
Mississippi Flyway Council, Calvert Room, Upper Lobby Level
Central Flyway Council, Diplomat Room, Upper Lobby Level
Pacific Flyway Council, Embassy Room, Upper Lobby Level
National Waterfowl Council, Hampton Room, Upper Lobby Level

Comments and requests to testify may be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1985–86 under §§ 20.101 through 20.107 of subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. During the 1985–86 hunting season, regulations are proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant, and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under Proposed 1985–86 Migratory Game Bird Hunting Regulations (Preliminary) in this document.

On June 5, 1984, the Fish and Wildlife Service published a proposed rule to revise the List of Migratory Birds (50 CFR Part 10 Subpart B § 10.13) in the **Federal Register** (49 FR 23197–23202). These revisions are occasionally necessary as new records are established and as taxonomic classifications change. The proposed revision of the list of migratory birds adopts, as a uniform system, the taxonomy and nomenclature of the American Ornithologists Union's Checklist of North American Birds (6th Ed., 1983). these revisions, when implemented by a final rule, will make certain changes in the classification, common or scientific names of migratory game birds subject to the hunting regulations proposed herein. These changes are as follows:

Dove, White-fronted, will be dove, White-tipped
Duck, Black, will be Duck, American Black
Duck, Mexican, *Anas diazi*, deleted (merged with *A. platyrhynchos*)
Pintail, Bahama, will be Pintail, White-cheeked
Scoter, White-winged, *Melanitta deglandi*, will be *M. fusca*
Teal, Common, will be Teal, Green-winged
Gaullinule, Common, will be Moorhen, Common
Goose, Emperor, *Philacte canagica*, will be *Chen canagica*
Goose, White-fronted, will be Goose, Greater White-fronted
Snipe, Common, *Capella gallinago*, will be *Gallinago gallinago*
Swan, Whistling, will be Swan, Tundra

Notice of Intention To Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1985–86 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory bird hunting regulations. Proposed season frameworks, shooting hours, and daily bag and possession limits are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United States opening prior to October 1 (early seasons); and (3) seasons opening in the remainder of the United States about October 1 and later (late seasons). Regulations development for each of the three categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two consideration s compress the time in which the rulemaking process must

operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. *Proposed rulemakings*—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe season lengths, bag and possession limits shooting hours, and outside dates within which States may make season selections.

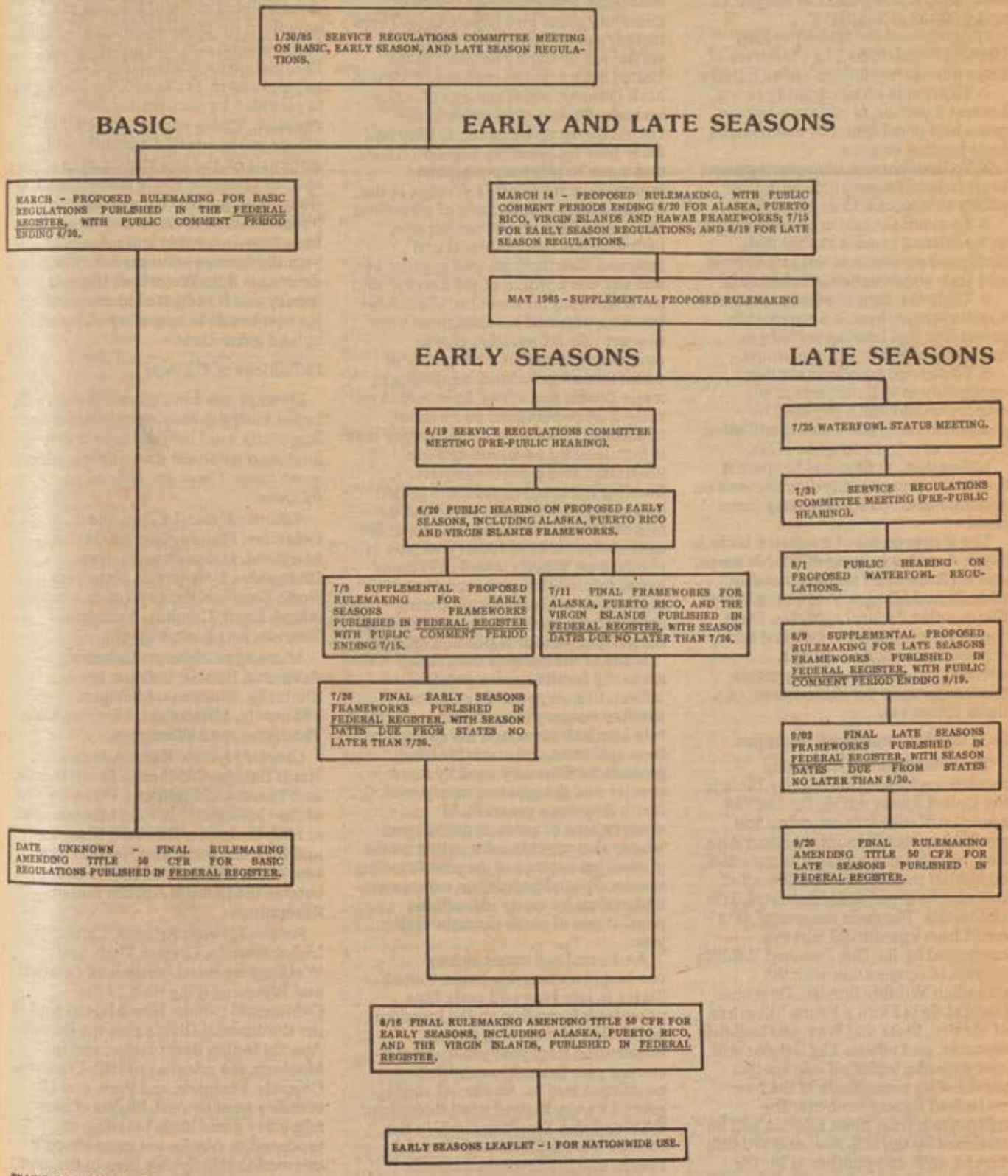
2. *Final rulemakings—frameworks.* Final migratory game bird regulations frameworks which prescribe season lengths, bag and possession limits, shooting hours, and outside dates within which States may make season selections.

3. *Final rulemakings—season selections.* Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1985–86 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram.

BILLING CODE 4310-55-M

1985 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



BILLING CODE 4310-55-C

All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.

2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.

3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.

4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.

5. To provide equitable hunting opportunty in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.

6. To assist, at time and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1985–86 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data result from operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de la Flora y Fauna Silvestres of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the U.S. Fish and Wildlife Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include annual surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and type of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulation changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebraska. The Service also solicits information on these and other species from knowledgeable individuals. Last year the Service continued the study to determine if its Waterfowl Harvest Survey can be adjusted to measure harvest trends in migratory shore and upland game birds.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. These are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding, migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Hearings

Two public hearings pertaining to 1985–86 migratory bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 20 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, D.C. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and special falconry seasons. On August 1 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 20 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, or telephone (202) 254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing. Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules, woodcock, common snipe, coots, cranes, and waterfowl; coots, cranes, common snipe and waterfowl in Alaska; migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportuntiy to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals.

Final promulgation of migratory bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments as follows:

For comments on Proposed 1985–86 Migratory Game Bird Hunting Regulations (Preliminary) write to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW, Washington, D.C. The Service will acknowledge but may not respond in detail to each comment. Specific comment periods will be established for each of the three series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department officials will be in attendance. In this regard, Departmental representatives will be present at the following spring meetings of the various flyway councils:

Date: March 17, 1985.

—Atlantic Flyway Council, 10 a.m.
—Mississippi Flyway Council, 9 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3 p.m.

Address: Council meetings will be held at The Shoreham Hotel, Washington, D.C., as follows:

—Atlantic Flyway Council, Executive Room, Upper Lobby Level
—Mississippi Flyway Council, Calvert Room, Upper Lobby Level
—Central Flyway Council, Diplomat Room, Upper Lobby Level
—Pacific Flyway Council, Embassy Room, Upper Lobby Level
—National Waterfowl Council, Hampton Room, Upper Lobby Level

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared or specific matters which serve to supplement the material in the Final Environmental Statement. These have addressed regulations for various species of migratory game birds and hunting strategies. The 1975 FES is out of print but copies of the various environmental assessments which supplement it are available upon request from the Office of Migratory Bird Management (address given previously).

Endangered Species Act Consideration

Prior to issuance of the 1985–86 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the Federal Register: March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service on March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $638 million for migratory bird hunting in 1980. The Service estimated the expenditures for waterfowl hunting in 1980 to be $317 million (adjusted to 1981 dollars).

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on February 20, 1985 concluded that the hunting frameworks being proposed for 1985–86 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1985–86 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter activity and harvest information from the 1983–84 season. The summary of the 1985 update of the 1981 FRIA follows:

Stabilized regulations were again in effect during the 1984–85 season. New information which can be compared to that appearing in the 1984 update of the 1981 FRIA includes estimates of the 1983 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1983–84 hunting season. The data indicate that fall flights increased in the Pacific Flyway, and remained the same in the Atlantic, Mississippi, and Central Flyways. Hunter activity, both in numbers of hunters and hunter days, decreased, while there was no change in the total fall flight. This again demonstrates that non-regulatory factors, e.g., weather, local availability of ducks, habitat conditions, and local economy, affect hunter participation and the resulting benefits of duck hunting to the economy.

Copies of the supplemental FRIA are available upon request from the Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *se seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief, (202) 254–3207.

List of Subjects in 50 CFR Part 20

Hunting, Wildlife, Exports, Imports, Transportation.

The rules that eventually will be promulgated for the 1985–86 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) as amended.

Proposed 1985–86 Migratory Game Bird Hunting Regulations (Preliminary)

In regard to possible regulations changes, attention is invited to the Notice of Intent Published in the February 15, 1985, Federal Register (50 FR 6366), regarding Duck Harvest Strategies. In that Notice, the Service announced an intent to review potential management strategies for ducks prior to establishment of regulations for the 1985–86 hunting season. All elements of duck hunting regulations, including special seasons and options, were opened to review and comment. Responses to this notice will be accepted through April 15, 1985, and subsequently considered by the Service before supplementary regulatory proposals are developed. No comments resulting from the Notice were available at the time this document was developed. Therefore, the potential of the Notice to subsequently effect change in the proposals offered here should be recognized.

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, moorhens, band-tailed pigeons, gallinules, rails, coots, common snipe, and woodcock during the 1985–86 season are proposed. Changes or possible changes, when noted, are in relation to 1984–85 final frameworks or regulations. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. In connection with certain items, information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. Service views on these and other items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later. These and the Service's responses or comments follow the frameworks being proposed.

Stabilized Regulations for Duck Hunting. In 1979, a five-year program of stabilized waterfowl hunting regulations was initiated in Canada through the cooperation of the Canadian Wildlife Service and the 3 Prairie Provinces. In 1980 the U.S. Fish and Wildlife Service, with support form the Flyway Councils and other organizations, agreed to join Canada in this program by stabilizing season lengths and bag limits for a 5-year period beginning with the 1980–81 season at the 1979–80 hunting season level. During this period, Canada and the United States have cooperated in investigating the relationship between duck populations and ducks harvests continentally in the absence of annual changes in season lengths and bag limits. The July 1, 1980, Federal Register (at 45 FR 44546) advised that the Service planned to take this action in connection

with an evaluation program to be conducted in cooperation with the Canadian Wildlife Service. The immediate goal of the study is to develop a strategy to manage duck harvests. The long-term goal is to identify management steps to maintain North American duck populations.

Cooperative U.S.-Canadian investigations of the stabilized regulations program have focused on the mallard. The 1984–85 hunting season marked the final harvest period in the program. However, field activities, including banding, radio-telemetry, and nesting studies will continue through 1985. Because of these continuing field studies as well as time required for analysis and interpretation of data collected, a final, comprehensive report on the evaluation of stabilized regulations will not be available prior to 1986. In the interim, a progress report is being prepared, based on information available to date.

The Service proposes to amend 50 CFR Part 20 as follows:

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Framework dates for ducks and geese in the continental United States* (No change.) The Service proposes that these frameworks are to be generally the same as during the 1984–85 season: From October 1, 1985, to January 20, 1986, for the Atlantic Flyway; from the Saturday nearest October 1, 1985, to January 20, 1986, for the Mississippi Flyway; from the Saturday nearest October 1, 1985, through the Sunday nearest January 20, 1986, for the Central and Pacific Flyways with the following exceptions:

A. Experimental extension of the duck season framework closing date: Mississippi conducted an experimental extension of the framework closing date for duck hunting from January 20 to January 31 during the 1979–80 through 1984–85 hunting seasons. The final report of the study is to be available to the Service and Mississippi Flyway Council states prior to the 1985 summer Council meeting (July).

B. Sea ducks: see item 5.

C. September teal season: see item 6.

D. Experimental September duck seasons: see item 8.

E. Special scaup season: see item 9.

F. Snow (including blue) and Greater white-fronted geese: In Louisiana, between October 1, 1985, and February 14, 1986, in zones established for duck hunting seasons.

G. Snow geese: In the Atlantic Flyway, October 1, 1985, through January 31, 1986. In the Central Flyway, except New Mexico, September 28, 1985, through February 17, 1986. In the Central Flyway portion of New Mexico, September 28, 1985, through February 28, 1986.

H. Canada geese: Atlantic Flyway—In New York (including Long Island), Rhode Island, Connecticut, New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, a designated area in southeastern Pennsylvania, North Carolina, and South Carolina the Canada goose season framework extends to January 31, 1986. Mississippi Flyway—In Kentucky, Tennessee, and Mississippi the Canada goose season framework extends to January 31, 1986.

I. Alaska waterfowl: see item 25.

Additional information. By letter dated January 20, 1985, a California waterfowl hunter expressed concern that the duck season in southern California opens and closes too early, and recommended setting waterfowl seasons for the area extending into February and establishing a duck hunting zone for Lake Baldwin in the San Bernardino Mountains. The letter was accompanied by the signatures of twenty-seven licensed California waterfowl hunters.

By letter dated January 28, 1985, Alabama requested their duck season framework closing date be extended from January 20, to January 31. State officials indicated a January 31 closing date would improve the low duck harvest in Alabama but would not significantly impact the Mississippi Flyway harvest, and would help decrease the disparity in Alabama's duck harvest with other Flyway states.

Response. The Service will consider the recommendations of the California sportsmen along with comments from other individuals, States, flyway councils, and interested organizations in establishing the 1985–86 waterfowl hunting season frameworks.

In recent years requests for a January 31 closing date for duck hunting have not been approved by the Service because of the strong sentiment expressed by the Flyway Councils that action on such requests should be deferred pending the outcome of a study in Mississippi to evaluate the effects of a late season on duck populations. The 1984–85 season was the last year of the Mississippi study and the final report is due this year. Until the report is evaluated by the Mississippi Flyway Council and the Service, action is deferred on any request for an extension of the closing date for duck seasons.

Further, the Service again notes its intent to review the need for more conservative harvest strategies for ducks as discussed in 50 FR 6366 dated February 15, 1985.

3. *American black ducks.* (No change) No changes in seasons and bag limits from those in effect since 1983–84 are proposed at this time pending a review of the 1984–85 American black duck harvest. Evaluation of American black duck hunting regulations is a continuing objective of the Service and has been in progress for several years. In 1983 a program to further restrict harvest of American black ducks was developed and initiated in cooperation with State wildlife agencies, Flyway Councils, and private organizations. The program and alternatives were discussed in an Environmental Assessment, *Proposed Hunting Regulations on Black Ducks, 1983,* which is available upon request to the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

4. *Wood ducks.* (No change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early October hunting season during which no special bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26669), and are summarized and updated for informational purposes:

The southeastern United States is defined as Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:

A. In 1985 States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15.

B. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway in 1985 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.

C. In addition, the extra teal option available to States in the Atlantic and Mississippi Flyways that select conventional regulations and do not have a September teal season may be applied during the period.

D. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

E. This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.

F. The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

The Service proposes to retain this option for the 1985 season.

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1985, and January 20, 1986, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York laying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia. Such areas shall be described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, and daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its sea duck season to open in September must make its selection no later than July 26, 1985. Those States desiring their sea duck season to open after September may makes their selection at the time they select their waterfowl seasons.

6. *September teal season.* (No change.) An open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The season may not excess 9 consecutive days between September 1 and September 30, 1985, with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by July 26, 1985.

Additional information. By letter dated December 28, 1984, Maine indicated consideration was being given to requesting a September teal season for 1985 or 1986. The State noted that establishment of such a season is of growing interest to local duck hunters and probably stems from the decreased hunting opportunity caused by recent hunting restrictions of American black ducks.

Response. September teal seasons are not currently offered to Atlantic Flyway States. However, those States not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These limits are in addition to the regular duck bag and possession limits. The Service does not favor expanding the September Teal Season option.

7. *Extra teal option.* (No change.)

A. States in the Atlantic Flyway (except Florida), not selecting the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

B. States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck seasons.

These extra limits are in addition to the regular duck bag and possession limits.

8. *Experimental September Duck Seasons.* Kentucky, Tennessee, and Florida conducted experimental duck seasons during the 1981–83 waterfowl seasons. Regulatory provisions in effect during the studies were continued through 1984 with each State's final report due May 15, 1985.

1984 was the sixth and final year of the experimental duck season in Iowa. A preliminary report on results of the 1979–83 waterfowl seasons is due June 1, 1985, prior to the time the 1985–86 early season hunting regulations are established. The final report is due by the 1986 winter meeting of the Mississippi Flyway Council Technical Section.

Additional information. By letter dated December 18, 1984, Florida requested operational status of their experimental September duck hunting season.

Response. The Service defers action on Florida's request pending receipt of the final report of their study and Atlantic Flyway Council recommendations.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

A. The season must occur between October 1, 1985, and January 31, 1986, all dates inclusive.

B. The season must occur outside the open season for any other ducks except sea ducks.

C. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1985, and

D. These areas must be described and delineated in State hunting regulations.

E. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

Additional information. On January 3, 1985, New York expressed interest in establishing a special scaup-goldeneye only season in the northwest part of the State.

Response. A scaup-goldeneye only season is not an option annually offered to States. The Service seeks additional information from New York on their interest.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States, in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions c and d listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change.) No changes in seasons and bag limits from those in effect since 1983–84 are proposed at this time pending review of canvasback harvest during the 1984–85 hunting season. The Service previously initiated a program whereby the focus of harvest regulations was changed from one of area closures to one of restrictive bag limits, and an experimental canvasback season was implemented in portions of the closed area in the Atlantic Flyway when established criteria were met. These actions and alternatives were presented in an Environmental Assessment, *Proposed Hunting Regulations on Canvasback Ducks, 1983,* which is available upon request to the U.S. Fish and Wildlife Service (MBMO), Washington, D.C. 20240.

13. *Duck Zones.* (No change.) States of the Atlantic, Mississippi, and Central Flyways may divide their States into zones for establishing different duck hunting seasons in accordance with criteria described in the **Federal Register** dated May 26, 1977 (42 FR 26671). The criteria for zoning are as follows:

A. The establishment of any of these zones shall be considered experimental until the effects of the zoning are more clearly defined and understood.

B. The primary purpose of the zoning shall be to provide more equitable distribution of harvest opportunity for hunters throughout a State.

C. Proposed zones and season dates shall not substantially change the pattern of harvest distribution among the States within a flyway.

D. Zoning shall not detrimentally change the harvest distribution pattern among species or populations at either the State or Flyway level.

E. Each zoning proposal shall include a detailed evaluation plan describing how changes in harvest will be measured, and what steps will be taken to compensate for any significant changes that might occur.

F. Each zoning proposal shall include an evaluation of anticipated changes due to zoning. If on the basis of this evaluation the Service and the State agree that no significant increase in harvest is likely, the zoning experiment may be conducted without a reduction in season length for each zone, pending further evaluation. If the evaluation indicates that a significant increase in harvest is likely, an appropriate reduction in season length compared to what would be permitted without zoning shall be made for each zone.

G. Where two or more adjoining States in a flyway may be involved simultaneously in zoning experiments, consideration shall be given to the possiblity of consolidating zones.

Memoranda of Agreement have been signed between the Service and each State participating in experimental zoning.

States in all Flyways may split their waterfowl season into two segments. States in the Atlantic and Central Flyways, in lieu of zoning, may split their season for ducks and geese into two or three segments.

In the June 13, 1984, **Federal Register** (at 49 FR 24421) the Service proposed the following for Louisiana: apply Central Flyway duck season length to the West Zone, Mississippi Flyway duck season length in the East Zone, and Mississippi Flyway bag limits in both zones. The proposal was made during the 1984–85 regulations process but the Service stated no changes in duck hunting regulations in Louisiana would be made until the 1985–86 hunting season.

In the September 14, 1984, **Federal Register** (at 49 FR 32677) the Service noted that 25 comments on the Louisiana proposal had been received: 3 (1 State and 2 individuals) in support and 22 (18 States, 2 organizations, and 2 individuals) in opposition. In view of the source and nature of those comments the Service announced that further action on the proposal was deferred pending additional consultation particularly with the Central and Mississippi Flyway Councils.

The Service continues to seek additional consultation on this issue.

Additional information. Kansas, by letter dated January 8, 1985, advised the Service of their interest in experimentally zoning the Low Plains portion of the State for duck hunting. The letter indicated a proposal will be developed and available for review in March should they decide to proceed with their interest.

The Lake Champlain Fish and Wildlife Policy Committee provided notice that Vermont may seek to zone the State in order to assure continuation of a unified season on the New York and Vermont portions of Lake Champlain.

Reponse. The Service awaits additional information from Kansas and Vermont concerning these preliminary notices of interest.

Further, the Service again notes its intent to review the need for more conservative harvest strategies for ducks as discussed in 50 FR 6366 dated February 5, 1985.

14. *Goose and brant seasons.* The Canadian Wildlife Service, State conservation agencies, the four Waterfowl flyway councils, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1985 will provide additional information.

Atlantic Flyway. (No change.) Seasons and bag limits are to be generally the same as last year pending receipt of additional information and recommendations. No significant changes from those in effect in 1984–85 are anticipated at this time.

Mississippi Flyway. (No change.) Seasons and bag limits are to be generally the same as last year pending receipt of additional information and recommendations.

Harvests of the Eastern Prairie and Mississippi Vally Populations (MVP) of Canada geese in this flyway are controlled by quota allocations and harvest objectives. Specific quotas will be established after population management objectives, recent population information, probable production, and expected fall flights have been taken into consideration. It is intended that the entire quota can be safely taken without detriment to the population, and that such harvests are appropriate considering population objectives. Goose seasons in quota areas end when the quota has been achieved and the season terminated by State action, emergency order under

Section 20.26 of CFR 50, or when the permissible number of hunting days has expired. Specific procedural information for season closures of quota areas will be included in the final regulations.

The Mississippi Flyway Council is currently considering a revised management plan for MVP Canada geese. Any proposed regulatory changes that may result from the revision will be described in a supplemental proposed rulemaking. The intent of the Service is to support the goal of rebuilding this flock. It is expected the general restrictive regulations developed for MVP geese during the 1984–85 season will be continued. Proposals for change will be considered during the 1985–86 regulations development process.

Additional information. In a letter dated January 18, 1985, the Director of the Michigan Department of Natural Resources reiterated the State's views concerning the goose regulations established for Michigan's 1984–85 hunting season. The State believes that the regulations designed to protect MVP geese were unnecessarily restrictive in Michigan and curtailed the State harvest of other goose flocks. Further, Michigan questioned the absence of similar restrictions in some States where MVP geese appear to be harvested in numbers comparable to the Michigan harvest.

Similar concerns regarding MVP Canada geese regulations were expressed by the Michigan Duck Hunters Association in a letter dated January 22, 1985.

By letter dated January 28, 1985, the State of Wisconsin requested the season length for Canada geese in their Mississippi River Zone be increased from the 35 days allowed in 1984–85 to 70 days. They indicated the annual Canada goose harvest in the zone is quite small and includes MVP, Eastern Prairie Population, and Giant Canada geese. State officials feel the change would alleviate the disparity between the Canada goose hunting opportunity provided for across the Mississippi River in Minnesota and Iowa.

Response. It is expected the Mississippi Flyway Council will address these and other concerns during their dileberations on a revised management plan for MVP geese. The Service seeks recommendations on MVP management from the Council for consideration in the development of goose hunting regulations.

Central Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1984–85 are anticipated at this time.

Additional information. Kansas, by letter dated January 8, 1985, advised the Service of their interest in zoning the State for snow goose hunting. The letter indicated a proposal will be developed and available for review in March should they decide to proceed with their interest.

Response. The service awaits further information from Kansas concerning this notice of interest.

Pacific Flyway. As a result of available information indicating that substantial declines in populations of dusky Canada Geese, Pacific Flyway Greater whitefronted geese, cackling Canada geese and Pacific brant had occurred in recent years, the Service initiated various harvest restrictions on these species in 1984.

No significant changes from the restrictive regulations in effect in 1984–65 are anticipated at this time. Specific season frameworks, season lengths, and daily bag limits for geese are deferred pending additional information and recommendations.

15. *Tundra Swan.* (No change.) The following frameworks for tundra swans are proposed. In Utah, Nevada, Montana (Central and Pacific Flyways), North Dakata, and South Dakota an open season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. except in the Central Flyway portion of Montana, the season must run concurrently with the duck season; in the Central Flyway portion of Montana, the season must run concurrent with the goose season;

B. in Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan;

C. in Navada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties;

D. in Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties;

E. in Montana (Central Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan;

F. in North Dakota, no more than 1,000 permits may be issued authorizing each permittee to take 1 tundra swan;

G. in South Dakota, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan;

H. States must employ a method to assure that hunters validate their harvest. In North Carolina an experimental season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. The season may be 90-days and must run concurrently with the snow goose season.

B. The State agency must issue permits and obtain harvest and hunter participation data.

C. No more than 1,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

16. *Sandhill cranes.* (No change.) Pending evaluation of harvest data from the 1984–85 season, seasons for hunting sandhill cranes may be selected within specified areas in Arizona, Colorado, Kansas, New Mexico, Texas, Oklahoma, North Dakota, South Dakota, Montana, and Wyoming with no substantial change in dates from the 1984–85 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes, except in experimental season areas in Arizona and Wyoming where the limit is 2 cranes per season for 200 and 250 permit holders, respectively, and in the experimental season areas of New Mexico where the limit is 3 cranes per season for 345 permit holders. The provision for a Federal sandhill crane hunting permit is continued in all the above areas except experimental season areas in Arizona, New Mexico, and Wyoming.

Additional information. On January 9, 1985, Wyoming transmitted the final report of their 3-year (1982–84) experimental September hunting season on sandhill cranes and Canada geese. State officials recommend the experimental hunt be granted operational status and that the framework dates be extended one day from September 1–14 to September 1–15.

Response. The Service defers action on Wyomings recommendations pending Service evaluation of the report and receipt of Pacific Flyway Council recommendations.

17 *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Common Moorhens (formerly Common Gallinules) and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1985, and January 20, 1986, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1985 and January 19, 1986, of not more than 70 days. Any state may split its moorhen/

gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons within the waterfowl seasons. A moorhen/gallinule season selected by any State of portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1985, and January 20, 1986, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and King Rails

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia Rails

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlanic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1985, and February 28, 1986, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1985, and February 28, 1986, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

21. *Woodcock.*

A. Central and Mississippi Flyways. (No change.)

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1985 and February 28, 1986. States may split their woodcock season without penalty.

B. Atlantic Flyway. (Change).

The number of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1982, the Service implemented an October 1 framework opening date for woodcock hunting in the Atlantic Flyway in order to provide additional protection to woodcock populations. The October 1 opening was continued in 1983 and 1984. Definitive information does not exist to either confirm of deny relationships among regulations, harvest, and the continued decline of eastern woodcock. The Service believes, however, that some adjustment of hunting regulations is necessary to bring harvest opportunities to a level commensurate with the current population status. For the 1985–86 hunting season in the Atlantic Flyway the Service proposes the following: States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1985 and January 31, 1986. States may split their woodcock season without penalty.

New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

The February 5, 1985, Federal Register (at 50 FR 4994) announced the availability of, and solicited public review, comments, and suggestions on the Service's draft Environmental Assessment "Proposed Hunting Regulations on Eastern Population of Woodcock, 1985" which discusses the regulations changes presented above. Information and comments received are presently being reviewed.

22. *Band-tailed pigeons.* (No change.)

Pacific Coast States (California, Oregon, and Washington) and the *Nevada* counties or Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 30 consecutive days between September 1, 1985, and January 15, 1986. The daily bag and possession limits may not exceed 5 band-tailed pigeons.

California may zone by selecting hunting seasons of 30 consecutive days for each of the following two zones:

A. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

In *Nevada* each hunter must have in possession a valid band-tailed pigeon hunting permit.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1985. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1985, in the North Zone, and October 1 and November 30, 1985, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* (No change.) Beginning in 1982, a program of generally uniform frameworks was implemented in all 3 mourning dove management units. For the 1983 season,

States were offered an option of a season length of 70 half or full days with a daily bag and possession limit of 12 and 24, respectively, or a season length of 60 half or full days with a daily bag and possession limit of 15 and 30, respectively. States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods.

The Service proposes to offer these options again during the 1985 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

Between September 1, 1985, and January 15, 1986, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit: All States east of the Mississippi River and Louisiana.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full or half days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 full or half days and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three time periods.

C. As an option to the above, Alabama, Georgia, Illinois, Louisiana, and Mississippi may elect to zone their States as follows:

a. Two zones per State as described in 48 FR 35103.

b. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may run consecutively or be split into not more than three periods.

c. The hunting seasons in the South Zones of these States may commence no earlier than September 20, 1985.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 days, and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three periods.

C. In New Mexico, daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 under the alternative), singly or in the aggregate of the two species.

D. In addition to the basic framework and the alternative, Texas may divide the State into three zones for purposes of dove hunting in accordance with zoning proposals previously approved by the Service and the Central Flyway Council. The various zones are described in 49 FR 31424.

a. The hunting seasons may be split into not more than two periods except as noted below.

b. The North and Central Zones may have seasons of not more than 70 (or 60 under the alternative) days between September 1, 1985, and January 25, 1986.

c. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20, 1985, and January 25, 1986. In the special white-winged dove portion of the South Zone, a limited mourning dove season may be held concurrently with the 4-day white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining 66 (or 56 under the alternative) days must be within the September 20, 1985, through January 25, 1986 period.

d. The daily bag limit may not exceed 12 (or 15 under the alternative) mourning, white-winged, and white-tipped doves in the aggregate, no more than two of which may be white-winged doves nor 2 of which may be white-tipped doves; the possession limit may not exceed 24 (or 30 under the alternative) doves in the aggregate including no more than 4 white-winged and 4 white-tipped doves.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

A. Shooting hours of one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full days with daily bag limits not to exceed 12 and 24 doves, respectively, which may run consecutively or be split into not more than three periods.

C. As an alternative, except in Arizona, seasons not exceeding 60 days and limits of 15 to 30 doves, respectively, may run consecutively or be split into not more than 3 periods.

24. *White-winged and white-tipped doves.* (No change). Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1985, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, singly or in the aggregate, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1985, and January 25, 1986, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1985, and January 15, 1986, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate

may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

25. *Migratory bird hunting seasons in Alaska.* (No change.) In 1977, by mutual agreement, the Service and the Alaska Department of Fish and Game initiated a study of stabilized hunting regulations for the 5-year period, 1977 through 1981. Background information on this experiment was given in the Federal Register dated March 10, 1977 (42 FR 13317). Alaska submitted its final report of the study on December 31, 1981, and requested that it be permitted to continue setting stabilized regulations in conjunction with the stabilized duck hunting experiment underway in the remainder of the Pacific Flyway. The 1982–83 Alaska frameworks contained the stabilization feature. The Service proposes to allow Alaska to maintain stabilized duck hunting frameworks during the 1985–86 season.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1985–86

Outside Dates: Between September 1, 1985, and January 26, 1986, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exception: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. In addition to the basic limit, there is a daily bag limit of 4 and a possession limit of 8 Emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 2 and a possession limit of 4.

26. *Migratory game birds in Puerto Rico and doves and pigeons in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1985–86

Shooting hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1985, and February 28, 1986, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *Dendrocygna arborea)*; fulvous whistling (tree) duck *Dendrocygna bicolor)*, and the masked duck *(Oxyura dominica)*, which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots *(Fulica americana)* and Caribbean coots *(Fulica carabaea)*.

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules *(Porphyrula martinica)*.

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1985, and January 15, 1986, as follows.

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Muncipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon *(Columba leucocephala)*, known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot *(Amazona vittata)* presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas—consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon *(Columba inornata wetmorei)*, locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1985–86

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Ducks

Outside Dates: Between December 1, 1985, and January 31, 1986, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1985, and January 15, 1986, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1985, and January 15, 1986, the length may not exceed 60 full days; and the daily bag and possession limits may not exceed 10 and 20 doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indian Reservations.* In the March 23, 1984, **Federal Register** (49 FR 11125–11126), the Service published proposed guidelines for migratory bird hunting regulations for tribal members on Federal Indian reservations. The proposed guidelines would seek to accommodate reserved hunting rights of Indians and would permit them to select hunting season dates within Federal frameworks but on different dates than those selected by the surrounding State(s). The tribes generally supported the Service's efforts to accommodate the reserved hunting rights of Indians. However, their letters reflected a desire for greater flexibility than the Service proposed. In contract, most States raised a number of concerns regarding the potential impacts of the published guidelines.

The question of special migratory bird hunting regulations for Indians is complex, and it is clear that the Service must develop a broader policy to address Indian hunting rights, while ensuring that the migratory bird resource is not adversely affected. The Service intends to work closely with Indian tribes, States, and interested conservation organizations during the coming months in developing appropriate criteria that can be applied in the 1985–86 hunting season.

Dated: March 1, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of experimental fishing permit applications and request for comments.

SUMMARY: This notice acknowledges receipt of seventeen additional applications for experimental fishing permits (EFTs) to harvest groundfish with set nets in the Pacific Ocean north of 38° N. latitude in 1985. These applications were submitted in response to a notice announcing the receipt of one application and that applications would be accepted until February 15, 1985. If granted, an EFP would allow fishing which otherwise would be prohibited by Federal regulations.

DATE: Comments on these applications must be received by March 15, 1984.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10. A notice (50 FR 4545, January 31, 1985) announced that an application

for an EFP to harvest groundfish with set nets in the Pacific Ocean north of 38° N. latitude during 1985 had been received. It also announced that other applications would be accepted until February 15, 1985. The notice requested comments by March 15, 1985, on EFPs for fishing for groundfish using set nets north of 38° N. latitude.

Seventeen aditional applications were received by February 15, 1985. Some of these applications were incomplete and the applicants were notified that they must submit additional information on their applications would not be considered. Three applicants were fishermen who had obtained EFPs to fish for groundfish with set nets in 1984.

The regulations prohibit fishing for groundfish using set nets north of 38° N. latitude because the Pacific Fishery Management Council (Council) was concerned about (1) the potential for an unacceptably high incidental catch of salmon, (2) the lack of information on the potential incidental catch of other species such as halibut and protected groundfish species, (3) the ability of set nets to continue fishing indefinitely if lost or unattended, (4) the introduction of a new fishery when the stocks were already fully utilized by existing gear, and (5) the potential for conflict between fixed and mobile gear if used in the same area. This restriction is consistent with historic State groundfish regulations.

Three EFPs for fishing with set nets for groundfish north of 38° N. latitude were issued in 1984. Most of the experimental ofishing occurred in a small area off the northern Washington coast. Sablefish was the target species and 377 metric tons (mt) was landed. Lingcod (137 mt) and rockfish (59 mt) were also landed. The incidental catch of salmon was negligible as only one salmon was observed in 1984. The incidence of halibut was higher, with an average of five halibut caught per vessel-day in 1984. Low incidental catches were observed in 1983 when two vessels fished for groundfish using set nets under an EFP in the same area. As most of the fishing effort using set nets for groundfish has been confined to a few fishermen in a small area, there is still a lack of information on incidental catches of salmon and halibut in sets nets in other areas of the North Pacific and on the potential for gear conflicts and loss if greater numbers of fishermen used such gear in any area.

The eighteen applications received this year are available for public review in the office of the Director at the address above. All of the applicants proposed to use nets in the North Pacific to harvest groundfish, targeting on sablefish, lingcod, and rockfish. Most of the applicants propose to fish primarily off northern Washington. The proposed gear is essentially the same as the gear used under the EFPs issued in 1983 and 1984.

Advice on whether to approve or deny all or some of the applications will be sought from the Council at its March 12–15 meeting in Portland, Oregon. Considerations toward a decision will include recommendations made by the Council at its March meeting and comments received from the public. EFPs are issued to obtain information about the use of set nets to determine whether they can be allowed by the FMP without undue negative impact on the resource or on other fishermen. Sablefish, the target species of these proposed EFPs, is currently fully utilized by fishermen using gear which is allowed by the FMP. Information on use of set net gear in a confined area off northern Washington was obtained during 1983 and 1984, and further information from this area in 1985 may not be necessary. In order to obtain a broad base of information, EFPs may restrict fishing to specific areas other than a broad base off northern Washington where the past experimental effort was concentrated. The number of EFPs issued may also be limited by the funds available to pay for observers to collect experimental data and to monitor permit compliance. Only three permits were issued in 1984 because of limited funds. It is possible that no EFPs will be granted in 1985 because of resource and allocation concerns.

After a decision is made on how many, if any, EFPs will be issued in 1985, a selection among applicants will be made. The selection will be based on the proposals best suited to achieve the purpose of the EFP with regard to obtaining needed information on the use of set net gear. The evaluation will consider the applicants' experience and ability to comply with the conditions of the experiment which will be specified in the permits. Willingness to fish in any or all areas may improve an applicant's chance of being selected. If objective evaluation does not sufficiently limit the number to be considered, a random drawing may be used to select successful applicants. If applicants do not voluntarily achieve an acceptable area distribution, area assignments may be imposed as conditions of the permits.

(16 U.S.C. 1801 *et seq.*)

Dated: March 8, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-6023 Filed 3-11-85; 9:46 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 50
Thursday, March 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

Office of the Secretary

Member of the Performance Review Board

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 49 FR No. 118, pg. 24910.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250 (202/447-6905).

The membership of the U.S. Department of Agriculture's Performance Review Board is amended by adding the name of Thomas O. Kay.

John R. Block,

Secretary.

March 8, 1985.

[FR Doc. 85-6054 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Pasquale Road RC&D Measure, CA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 94616; telephone (916) 449-2848.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pasquale Road RC&D Measure, Nevada County, California.

The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for critical area treatment. The planned works of improvement include erosion control practices such as retaining walls, subsurface drain system, minor grading and shaping, and revegetation of exposed and critically eroding areas.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Serivce, 2828 Chiles Road, Davis, California 95616, (916) 449-2848. A combined environmental assessment and finding of no significant impact has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

Implementations of the proposal will not be initiated until thirty days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, REsource Conservation and Development Program-Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Paul H. Calverley,

Deputy State Conservationist.

March 6, 1985.

[FR Doc. 85-6084 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-16-M

Bluff Irrigation District Farm Irrigation RC&D Measure, WY; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bluff Irrigation District Farm Irrigation RC&D Measure in Washakie County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Frank S. Dickson, Jr., State Conservationist, Soil Conservation Service, Room 3124, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, nor national impacts on the environment. As a result of these findings, Mr. Frank S. Dickson, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure plan includes replacing an existing canal and underpass on Little Gooseberry Creek with an inverted siphon and installing a wasteway structure at the inlet to the siphon.

The Finding of No Significant Impact (FONSI) and Environmental Assessment Summary (EAS) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI and the EAS are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Frank S. Dickson, Jr.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order No. 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: March 4, 1985.

Frank S. Dickson,

State Conservationist.

[FR Doc. 85-6073 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-16-M

Rebel Flat Creek Watershed, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; the Council on Environmental Quality NEPA Regulations (40 CFR Part 1500-1508); and the Soil Conservation Service NEPA Procedures (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rebel Flat Creek Watershed, Whitman County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, W. 920 Riverside, Room 360, Spokane, Washington, 99201-1080, telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for soil conservation and improvement of soil resources and water quality. The planned works of improvement include onfarm land treatment practices, streambank corridor management, and wildlife habitat plantings.

The Notice of a Finding of No Significant Impact (FONSI) as been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on implementaiton of the proposal will be taken until 30 days after the date of this publicaiton in the **Federal Register.**

Dated: March 1, 1985.

Lynn A. Brown,

State Conservationist

[FR Doc. 85-6081 Filed 3-13-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Request for and Notice of Amendment Action
Form No: Agency—ITA-685P; OMB—0625-0003
Type of request: Extension of the expiration date of a currently approved collection
Burden: 8,000 respondents; 2,000 reporting hours
Needs and uses: This form is used by exporters to amend an export license due to changes that have taken place in the original transaction, provided that the change is not of such significance as to constitute a new transaction
Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Notification of Delivery Verification Requirement
Form No.: Agency—ITA-648P; OMB—0625-0005
Type of request: Extension of the expiration date of a currently approved collection
Burden: 1,440 respondents; 240 reporting hours
Needs and uses: This form (ITA-648P) is used to notify exporters that they must ask their foreign consignee to supply the Office of Export Administration with a certification that the U.S. commodities were actually delivered to the foreign cosignee. ITA-648P was developed as a result of the efforts of the U.S. and other free world countries to increase the effectiveness of their controls over international trade in strategic commodities.
Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Foreign Availability Procedures and Criteria
Form No.: Agency—N/A; OMB—N/A
Type of request: New collection
Burden: 500 respondents; 1,000 reporting hours
Needs and uses: information will be used to develop a foreign commodity availability data base
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligations: Voluntary
OMB desk officer: Sheri Fox, 395-3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-6142 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-475-404]

Tubular Steel Framed Stacking Chairs From Italy; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tubular steel framed stacking chairs (stacking chairs) from Italy are being, or are likely to be, sold

in the United States at less than fair value. We also preliminarily determined that critical circumstances do not exist. We have notified the U.S.International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by May 22, 1985.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5332.

Preliminary Determination

We have preliminary determined that stacking chairs from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins range from zero percent to 20.56 percent, and the weighted-average margins for the four respondents are shown in the section under "Suspension of Liquidation".

Case History

On August 10, 1984, we received a petition from Frazier Engineering, Inc., on behalf of the domestic stacking chair industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of stacking chairs from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The petitioner also alleged that "critical circumstances" exist. After reviewing the petition we determined that it contained sufficient grounds on which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 30, 1984 (49 FR 174). On September 24, 1984, the ITC preliminarily determined that there is reasonable indication that imports stacking chairs from Italy are materially injuring a U.S. industry.

Based on available import information we presented questionaires to Ellisse, Division della A & T europe S.p.A. (Ellisse), and EMU S.p.A. (EMU), for the investigation in late September and early October of 1984. Two unknown manufacturers, Omim Industriale, S.p.A. (Omim), and Stilganden, S.p.A. (Stilgarden), indicated that they wished to responded to the questionaire. Response were received on the following dates:

Ellisse, December 3, 1984
EMU, November 16, 1984 (revision on January 3, 1985)
Omim, November 27, 1984
Stilgarden, Novermber 14, 1984

The response from Stilgarden was incomplete. Sales of one chair model were not reported in half of the period of investigation for either market. Different qualities were also not reported for either market for any of the chairs. Certain other information could not be verified. Therefore, we are basing our determination on the best information available, which was determined to be the margin of the respondent with the highest margin.

On December 17, 1984, the petitioner requested that the Department postpone the preliminary determination until not later than March 8, 1985. The Department granted the request on December 21, 1984 (50 FR 308).

Scope of the Investigation

The product covered by this investigation is tubular steel framed stacking chairs, including stacking chairs with plastic slats or expanded metal mesh, as well as of wire grid, as currently classifiable in the Tariff Schedules of the United States, Annotated (TSUSA) under item number 727.7065.

This investigation covers sales made during the period from August 1, 1983, through July 31, 1984. The period was expanded from the normal period (March 1, 1984, through August 31, 1984) because of the seasonal nature of sales of the merchandise. The four respondents are the only known producers of this merchandise who export to the United States.

Fair Value Comparison

To determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, the purchase price of the subject merchandise was used to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. EMU had some sales to a related importer but since they did not account for a significant portion of the total sales to the United States we did not include those sales in our calculations.

Calculations for purchase price were based on FOB, or ex-works, packed prices to the unrelated United States purchasers. Deductions were made, as appropriate, for inland freight and rebates.

Foreign Market Value

Sales of such or similar merchandise in the home market were used to represent foreign market value, as provided for in section 773(a)(1)(A) of the Act. Comparisons were made using sales to the same level of trade as the U.S. sales. Calculations for foreign market value were based on FOB, or ex-works, packed prices to unrelated purchasers in the home market. Deductions were made, as appropriate, for inland freight. Further adjustments for differences in commissions and credit expenses, as appropriate, were made. Claims for adjustment for differences in circumstances of sale, made by Omim under § 353.15 of the Regulations, were denied because they were not directly related to the sales in question. A claim for advertising expenses made by EMU was denied because they did not clearly establish that the expenses were for stacking chairs. Packing costs were identical, for both markets, for all respondents.

In calculating foreign market value we made currency conversions from Italian lire to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the daily exchange rate certified by the U.S. Federal Reserve.

Verification

In accordance with section 776(a) of the Act we verified the information provided by the respondents using standard verification procedures, which included on-site inspection of the merchandise and examination of relevant sales and financial records of the company.

Preliminary Negative Determination of Critical Circumstances

The petitioner also alleged that imports of stacking chairs from Italy present "critical circumstances." Under section 733(e)(1) of the Act critical

circumstances exist when the Department finds that:

(1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise under investigation; or (b) the person by whom or for whose account the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there have been massive imports over a relatively short period, we considered the following factors: (1) Recent import penetration levels; (2) changes in import penetration since the date of the ITC's preliminary affirmative determination of injury; (3) whether imports have surged recently; (4) whether recent imports are significantly above the average calculated over several years; and (5) whether the patterns of imports over the last several years may be explained by seasonal swings. Based on our analysis of the information, we have determined that imports of the products covered by this investigation were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of stacking chairs, or whether the person by whom or for whose account these products were imported knew or should have known that the exporters were selling these products at less than fair value.

For the reasons described above, we have determined that "critical circumstances" do not exist with respect to stacking chairs from Italy.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threaten to materially injure, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make an affirmative final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the subject stacking chairs from Italy, which are entered, or withdrawn from warehouse, for consumption on or after the date this notice is published in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Margin (percent)
Ellisse	5.92
EMU	5.24
Omim	9.50
Stilgarden	9.50
All other producers and exporters	8.00

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, we will hold, if requested, a public hearing at 2:00 p.m. on April 8, 1985, to afford interested parties an opportunity to comment on this preliminary determination, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW. Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by April 1, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6141 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-402]

Tubular Steel Framed Stacking Chairs From Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that Tubular Steel Framed Stacking Chairs (stacking chairs) from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Investigations, International Trade Administration, U.S. Department fo Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1776.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that stacking chairs from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We have preliminarily found that the margins for all companies investigated are zero or *de minimis*.

If this investigation proceeds normally, we will make final determination by May 22, 1985.

Case History

On August 10, 1984, we received a petition in proper form from counsel for Frazier Engineering, Inc., Greenfield, Indiana on behalf of the U.S. industry producing stacking chairs. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that stacking chairs from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry. The petition also alleged that critical circumstances existed in the case.

After reviewing the petition, we determined it contained sufficient grounds to inititate an antidumping investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on Septembert 6, 1984 (49

FR 35166). The ITC subsequently found, on September 24, 1984, that there is a reasonable indication that imports of stacking chairs from Taiwan are materially injuring a United States industry. On December 17, 1984, the petitioner requested the Department to extend the preliminary determination until not later than March 8, 1985. On December 21, 1984, we granted the request (50 FR 308).

Scope of the Investigation

The products covered by this investigation are tubular steel framed stacking chairs, including stacking chairs with plastic slats or expanded metal mesh, as well as of wire grid, as currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item number 727.7065. We investigated sales of these stacking chairs which were made by three Taiwanese producers and sold to the United States during the period of investigation, August 1, 1983, through July 31, 1984. The firms investigated were Taiwan Lounge Chair Industry Co., Ltd., Taiwan Hsin Yeh Enterprise Co., Ltd., and Lu Kuang Enterprise, Co., Ltd. Sales by the above firms accounted for approximately 63 percent of all stacking chairs sold to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. In the case of Taiwan Lounge Chair Industry Co. and Lu Kuang Enterprise Co., we compared United States price based on purchase price with foreign market value based on the constructed value of the imported merchandise. For Taiwan Hsin Yeh Enterprise Co., we compared United States price based on purchase price with foreign market value based on the price to third countries.

United States Price

For Taiwan Lounge Chair, Taiwan Hsin Yeh and Lu Kuang, we used the purchase price of the subject merchandise to represent the United States price, as provided in section 772(b) of the Act, because the merchandise is sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price on the f.o.b. or c. & f. price to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States. We made deductions, where appropriate, for inland freight, ocean freight, brokerage charges, bank charges, export promotion fees and stamp tax. We made additions for import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to sections 772(d)(1)(B) of the Act.

Foreign Market Value

In all cases, there were either no sales, or insufficient sales, in the home market to use as a basis for foreign market value. For Taiwan Hsin Yeh, we selected sales for export to a country other than the United States (third countries) as a basis for foreign market value pursuant to section 773(a)(1)(B) of the Act. We used third country sales to Australia because Taiwan Hsin Yeh's sales to Australia were adequate in volume for comparison with U.S. sales. We calculated third country price on the basis of the f.o.b. or c. & f. price to unrelated trading companies for sale to Australia. We made deductions, where appropriate, for inland freight, brokerage charges, export bank charges and stamp tax. Where appropriate, we also made additions for import duties which were rebated or not collected by reason of the exportation of the merchandise, equal to those amounts added to the United States price. An adjustment was also made, where appropriate, for the difference between commissions on sales to the United States and Australia in accordance with § 353.15(c) of the Commerce Regulations. We adjusted for differences in packing; and we also adjusted for physical differences in the merchandise in accordance with § 353.16 of the Commerce Regulations.

In accordance with section 773 of the Act, we calculated constructed value, where appropriate, by adding the costs of materials, fabrication, general expenses and profit. For materials and fabrication, we used the appropriate producer's actual cost figures. The amount added for general expenses was the statutory minimum of 10 percent of the sum of material and fabrication costs or the actual general expenses, whichever was higher, as prescribed in section 773(e)(1)(B) of the Act. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses because the companies had no home market sales of merchandise of the same class or kind and we are unable to determine how much of the companies overall profit was related to sales to countries other than the U.S.

In calculating foreign market value, we made currency conversions from Taiwan New Dollars to United States dollars in accordance with § 353.56(a)(1) of our regulations, using certified daily exchange rates as furnished by the Federal Reserve Bank of New York.

Critical Circumstances

Petitioners alleged the existence of critical circumstances in this case. As our preliminary determination is negative, this issue is moot.

Verification

We have verified the data used in reaching the preliminary determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents. We will verify all data used in reaching a final determination.

Preliminary Results

The preliminary results of our investigation are as follows:

Manufacturer/seller/exporter	Weighted average margin (percentage)
Taiwan Lounge Chair	0
Taiwan Hsin Yeh	0.39
Lu Kuang	0

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring or threaten to materially injure a U.S. industry before the latter of 120 days after the Department makes its preliminary affirmative determination of 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on April 1, 1985, at the U.S. Department of

Commerce, room 1851, 14 Street & Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by March 25, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Dated: March 8, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6140 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-421-501]

Certain Expansion Tanks and Parts Thereof From the Netherlands; Initiation of Antidumping Duty Investigation

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 an antidumping duty investigation to determine whether certain expansion tanks and parts thereof from the Netherlands are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have been alleged. 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 this investigation proceeds normally, the ITC will make its preliminary determination on or before April 1, 1985, and the Department of Commerce will make its preliminary determination on or before July 24, 1985.

EFFECTIVE DATE: March 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 February 14, 1985, we received a petition in proper form from AMTROL, Inc., filing on behalf of the U.S. industry producing certain expansion tanks. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the Netherlands 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. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(e)) (the Act).

The petitioner bases the United States price on list prices of the U.S. importer minus stated discounts for the last quarter of 1984 and those currently in effect. From the price after discount, petitioner also deducts ocean freight and the standard industry mark-up, which includes credit, insurance, Dutch inland freight, profit, general and administrative expenses, warehousing and inventory, sales expenses and promotional expenses. From this price, petitioner deducts customs duty and brokerage fees to arrive at the estimated F.O.B. sales price.

Foreign market value is based on the ex-factory selling prices of the manufacturers in both the home market and West Germany, as the home market for expansion tanks is believed to be small.

Based on comparison of prices calculated using the foregoing methodology, the petitioner alleges an average dumping margin of 12.4 to 60.5 percent for expansion tanks from the Netherlands.

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 allegation.

We examined the petition on certain expansion tanks 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 investigation to determine whether certain expansion tanks and parts thereof from the Netherlands are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by July 24, 1985.

Scope of Investigation

The products covered by this investigation are expansion tanks and parts thereof for closed water systems from the Netherlands.

The term "expansion tanks" covers expansion or compression tanks, the primary device in pressurizing and maintaining pressure control in a closed water system. Expansion tanks are also known as hydro-pneumatic tanks. Expansion tanks may be provided for in the *Tariff Schedules of the United States, Annotated* under item numbers 657.25, 653.52, 711.78, 681.39, 678.50, or alternative item numbers. The proper classification of expansion tanks under the Tariff Schedules is currently under review.

Notification of the 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 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 April 1, 1985, whether there is a reasonable indication that imports of certain expansion tanks and parts thereof from the Netherlands are causing material injury, or threaten material injury, to a United States industry. If the ITC determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-6057 Filed 3-13-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification No. 1 to Permit No. 487; Kolmardens Djurpark

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 487 issued to Kolmardens Djurpark, S–618 00 Kolmarden, Sweden on November 30, 1984 (49 FR 48083), is modified as follows:

Section B–2 is modified by substituting the following:

"2. This Permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification became effective on March 6, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702.

Dated: March 8, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–6128 Filed 3–13–85; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collecton and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact whom a copy of the information proposal may be obtained.

Extension

Services and/or Supplies Provided by Civilian Hospitals, DA 1863–1.

The DA Form 1863–1 is used by CHAMPUS beneficiaries and health care providers to file for payment of health care services. The requested information is used to determine eligibility, appropriateness and cost of care, and whether services received are benefits.

Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions and small businesses or organizations.

Responses 97,226.

Burden Hours 48,613.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (703) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 11, 1985.

[FR Doc. 85–6123 Filed 3–13–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 7, 1985.

The USAF Scientific Advisory Board Tactical Cross-Matrix Panel will meet at Headquarters Tactical Air Command, Langley AFB, VA, 9–10 April 1985 (8:00 a.m.–5:00 p.m.) to review Tactical Air Forces modernization, command and control communications programs, and research, development and acquisition program priorities. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–6071 Filed 3–13–85; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

March 7, 1985.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet at the Arnold Engineering Development Center, Arnold Air Force Station, TN, on April 1 (8:00 a.m.–4:00 p.m.) and April 2 (8:00 a.m.–2:30 p.m.) 1985 in the A&E Building Conference Room to review selected ground test support requirements and programs. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–6072 Filed 3–13–85; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Comittee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Monday & Tuesday, 1 & 2 April 1985.

Times of meeting: 0830–1700 hours, both days (Closed).

Place: Fort Huachuca, Arizona.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Signals Warfare Laboratory (SWL) Effectiveness Review will meet for classified briefings and discussions. The first day's agenda will cover the TRADOC (U.S. Army Training and Doctrine Command) user; the second day will be devoted to panel discussions, including formats and assignments. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be

contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–6125 Filed 3–13–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Comittee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday & Wednesday, 2 & 3 April 1985.

Times of meeting: 0830–1700 hours, both days (Closed).

Place: Moffett Field, California.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Research and Technology Laboratories Effectiveness Review will meet for classified briefings and discussions. The panel will interact with representatives from industry and the TRADOC (U.S. Army Training and Doctrine Command) user community and then meet in an Executive Session to discuss findings and outline the report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–6126 Filed 3–13–85; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (EIS) for a Regulatory Permit Action for the Proposed Construction of the North-South Tollway in DuPage and Will Counties, IL

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

1. A Department of the Army permit pursuant to section 404 of the Clean Water Act will be required for the construction of the North-South Tollway (formerly F.A.P. 431), proposed by the Illinois State Toll Highway Authority, from Bolingbrook to Addison, Illinois. The Chicago District, U.S. Army Corps of Engineers, has jurisdiction over the discharge of fill material into wetlands along the tollway corridor and into tributary streams of the East Branch of the DuPage River.

2. Alternatives to be considered and studies in detail are:

(a) The proposed tollway with and without mitigation measures.

(b) The existing road system as well as planned future improvements and the potential widening of State Route 53.

(c) Permit denial (or no action), which would preclude construction of the tollway on lands under Corps of Engineers' permit authority.

3. Public involvement has included issuance of a public notice in August 1984 announcing the Toll Authority's intent to apply for a permit and the need to prepare an EIS for the proposed North-South Tollway. Coordination meetings on the proposal were held in September and November 1984 and January and February 1985. Agencies and parties expressing interest were invited to attend. Additional coordination meetings will be held periodically. In addition, the Toll Authority is initiating a public involvement program for disseminating information and answering questions on the proposed tollway.

4. Significant issues to be analyzed in depth are: Effects of tollway traffic on air quality and noise levels; land use changes; effects of deicing salt aerosols; destruction of wetlands and other biological resources; and the tollway's impact on the Morton Arboretum (a privately endowed, nonprofit research and education facility and botanical park).

5. The Corps of Engineers is the lead federal agency. The U.S. Environmental (USEPA) Protection Agency, U.S. Fish and Wildlife Services (USFWS) and Federal Highway Administration (FHWA) will serve as cooperating agencies, assisting in the review and evaluation of environmental data submitted by the Toll Authority for the EIS. Their primary areas of concern and expertise are: USEPA— air quality and noise, USFWS—biological resources; and FHWA—the proposed interchange link with Interstate 55 at the tollway's southern terminus.

6. The purpose of the periodic coordination meetings is scoping of environmental issues. Agencies and parties expressing interest will be notified of the time and place of future meetings. The next meeting is expected to be held in April 1985.

7. The DEIS is expected to be available to the public in November 1985.

8. Questions regarding the proposed action and DEIS may be directed to: Mr. Thomas Slowinski, U.S. Army Corps of Engineers, Chicago District, Regulatory Fuctions Branch, 219 South Dearborn Street, Chicago, Illinois 60604–1797 (312/353–6428).

Frank R. Finch,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 85–6078 Filed 3–13–85; 8:45 am]

BILLING CODE 3710–HN–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE)

ACTION: Notice.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences in support of the Solid State Sciences Committee. The DOE support under this grant will be $75,000 over a three year period.

Procurement Request No. 01–85ER10844.001.

Project Scope: The Solid State Sciences Committee will carry out studies of timely concern and importance to the Materials Science Community. U.S. and world-wide efforts in specific areas of solid state physics, metalurgy, ceramics, materials chemistry, and polymers, are expected to be considered by the committee in terms of trends and opportunities. These evaluations will be open to scientific endeavors which will be available to the entire U.S. and world-wide condensed matter communities. Eligibility for this continuation is restricted to the National Academy of Sciences, charted by Congress to conduct scientific research for the Government, to permit continuance of effort initiated several years ago.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C., on March 11, 1985.

Ben Goldman,

Director Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85–6138 Filed 3–13–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Cancellation of Meeting

This notice is given to advise of the cancellation of the meeting of the National Energy Extension Service Advisory Board (March 18, 19, and 20, 1985) as published in the issue of March 1, 1985 (50 FR 8366). The meeting will be rescheduled at a later date.

Issued at Washington, D.C. on March 12, 1985.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-6173 Filed 3-13-85; 10:55 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6433-003, et al]

Hydroelectric Applications (Warren B. Nelson, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License.

b. Project No: 6433-003.

c. Date Filed: June 7, 1984.

d. Applicant: Warren B. Nelson.

e. Name of Project: Riordan Creek Hydro.

f. Location: On Riordan Creek in Valley County, Idaho, within Boise National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Joseph B. Nelson, 3410 Montvue Drive, Meridian, Idaho 83642.

i. Comment Date: May 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 30-foot-long aluminum and concrete diversion dam with crest elevation 6,050 feet; (2) a 28-inch-diameter, 9,000-foot-long steel penstock; (3) a log powerhouse at elevation 4,950 feet containing 3 generating units with a total rated capacity of 2,175 kW and an average annual output of 10.2 GWh; (4) a buried corrigated aluminum tailrace with a stilling basin; and (5) a 525-foot-long, 69-kV transmission line. A fish ladder would be installed at the diversion site. The estimated cost of the project, as of June 1984, is $1,300,000, with construction planned to start within 24 months, and be completed within 42 months, from license issuance.

k. Purpose of Project: Project output will be sold to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

2 a. Type of Application: Preliminary Permit.

b. Project No: 8802-000.

c. Date Filed: December 14, 1984.

d. Applicant: Birch Power Company.

e. Name of Project: Pines Grazing.

f. Location: On Springs tributary to the Pahsimeroi River, in Custer County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ted Sorenson, Consulting Engineer, 550 Linden Drive, Idaho Falls, Idaho 83401.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion structure at elevation 5,600 feet; (2) a 29,400-foot-long feeder ditch; (3) a 6,100-foot-long, 34-inch-diameter steel penstock; (4) a powerhouse containing a single generating unit with a capacity 900 kW and an average annual generation of 5,500,000 kWh; and (5) a 0.05-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $45,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to Idaho Power.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

3 a. Type of Application: Transfer of License.

b. Project No: 5667-003.

c. Date Filed: December 31, 1984.

d. Applicant: East Coast Engineering (Licensee) and Northeast Hydro Development Associates-I (Transferee).

e. Name of Project: Weare Reservoir.

f. Location: On the Piscataquog River, Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. S. James Boumil, Esq., 100 Summit Street, Lowell, Massachusetts 01852.

i. Comment Date: April 12, 1985.

j. Description of Project: On December 31, 1984, East Coast Engineering (Licensee), and Northeast Hydro Development Associates-I (Transferee), filed a joint application for transfer of a minor license for the Weare Reservoir Project No. 5667.

The purpose of the proposed transfer of the license is to facilitate the financing of the licensed project. The Transferee would sell limited partnership interests to a small number of investors. Limited partners would have no ownership of or control over the project.

The proposed transfer would not result in any changes in the proposed development or any change in control of the development. No equipment has been contracted for or required to date. All engineering, design and feasibility studies performed would be transferred to the Transferee.

The Transferee states that it would comply with all the terms and the conditions of the license. Construction is required to commence by October 20, 1985.

k. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: License.

b. Project No: 8050-000

c. Date Filed: February 6, 1984

d. Applicant: Westmoreland County, Pennsylvania *et. al.*

e. Name of Project: Loyalhanna.

f. Location: On Loyalhanna Creek, in Conemaugh and Derry Townships, in Westmoreland County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Edward H. Curland, 1700 Broadway, Suite 2501, New York, New York 10019.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Loyalhanna Dam, Lake, and outlet works and would consist of: (1) A proposed 11-foot-diameter, 200-foot-long Steel-lined penstock; (2) a proposed concrete powerhouse housing two turbine units with a total installed capacity of 3.6 MW; (3) a proposed 1,700-foot-long, 25-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 12.86 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the West Penn Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: 5 MW Exemption.

b. Project No.: 8732-000.

c. Date Filed: November 21, 1984.

d. Applicant: City of Manassas, Department of Public Works.

e. Name of Project: Broad Run Hydroelectric.

f. Location: On Broad Run at Lake Manassas, in Prince William County, Virginia.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. Clyde D. Wimmer, Department of Public Works, City of Manassas, P.O. Box 512, Manassas, Virginia 22110.

i. Comment Date: April 15, 1985.

j. Description of Project: the proposed project would consist of: (1) an existing dam with a total length of approximately 636 feet and a maximum height of 72 feet; (2) an existing reservoir (Lake Manassas), with water surface area of 1,050 acres and storage capacity of 23,000 acre-feet at normal maximum water surface elevation of 285.0 feet, m.s.l.; (3) an existing 48 inch penstock approximately 30 feet long; (4) a proposed powerhouse, 32 feet by 28 feet, which will house two turbine/generating units with a total installed capacity of 1,000 kW; (5) a proposed tailrace about 40 feet long, and varying from 12 feet to 20 feet in width; (6) a proposed 12,470 volt transmission line approximately 12 miles long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy production to be 1,491,000 kWh. The dam and reservoir are owned by the City of Manassas, Virginia.

k. Purpose of Project: The Applicant anticipates that project energy would be utilized within the City's existing electrical grid system.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

6 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8417-001.

c. Date Filed: December 3, 1984.

d. Applicant: Thomas L. Yale and P. Andre LeMaistre.

e. Name of Project: Old Sparhawk Mill.

f. Location: On the Royal River in Cumberland County, Maine.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Thomas L. Yale, Old Sparhawk Mill, 25 Bridge Street, Yarmouth, Main 04096.

i. Comment Date: April 15, 1985.

j. Description of Project: The proposed project would consist of: (1) the existing 8-foot-high, 140-foot-long dam; (2) the existing 9-acre reservoir; (3) a proposed 215-foot-long, 7-foot-diameter steel penstock; (4) a proposed powerhouse which will contain 3 generating units, each 90-kW, for a total installed capacity of 270 kW; (5) the existing 18-foot-wide, 80-foot-long tailrace channel will be dredged; (6) a proposed 100-foot-long, buried transmission line; and (7) appurtenant facilities.

The Applicant estimates the average annual energy production to be 1.0 GWh.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

l. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7 a. Type of Application: Major License (Over 5 MW).

b. Project No.: 8261-000.

c. Date Filed: April 24, 1984.

d. Applicant: Hawkeye Hydro Partners I.

e. Name of Project: Red Rock Dam Hydroelectric Project.

f. Location: On the Des Moines River in Marion County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce Wrobel, Hawkeye Hydro Partners I, 91 Newbury Street, Boston, Massachusetts 01226.

i. Comment Date: April 12, 1985.

j. Competing Application: Project No. 7706, Filed October 7, 1983.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed headrace channel, which would be approximately 3,600 feet long and 150 feet wide and 40 feet deep. The headrace will be cut through the right abutment of the existing dam; (2) a proposed reinforced concrete powerhouse containing two generating units rated at 13.4 MW each and one generating unit rated at 3.4 MW, for a total installed capacity of 30.2 MW; (3) a proposed concrete gravity intake dam which would be connected to the powerhouse. The top of the intake dam would be 20 feet wide and would serve as a service road; (4) a proposed tailrace channel, which would be approximately 2,300 feet long and 150 feet wide and 40 feet high; (5) a proposed access road, which would be located adjacent to the left side of the powerhouse; (6) a proposed 69-kV transmission line; and (7) appurtenant facilities.

The estimated average annual energy output for the project is 90,600,000 kWh.

l. Purpose of Project: Power produced at the project would be sold to the Iowa Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8 a. Type of Application: Minor License.

b. Project No.: 8396-000.

c. Date Filed: June 26, 1984.

d. Applicant: Great Bear Hydropower, Inc.

e. Name of Project: Columbia Hydroelectric.

f. Location: On the Paulins Kill River in Knowlton Township, Warren County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Frederick Lapin, Young, Rose & Millspaugh, 65 Livingston Avenue, Roseland, New Jersey 07068.

i. Comment Date: April 19, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 16-foot-high, 330-foot-long concrete dam with the reinstallation of 2-foot-high flashboards; (2) a proposed 43-acre reservoir with a total storage capacity of 275 acre-feet at elevation 288.0 feet M.S.L.; (3) an existing powerhouse which will contain an installed generating capacity of 400 kW; (4) an existing tailrace channel; and (5) appurtenant facilities. The project would generate up to 1.7 GWh annually. The dam is owned by the State of New Jersey.

k. Purpose of Project: The Applicant proposes to sell the power to and directly connect with the New Jersey Power and Light Company and/or the New Jersey Board of Public Utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

a. Type of Application: Preliminary Permit.

b. Project No.: 8862-000.

c. Date Filed: January 3, 1985.

d. Applicant: Coffeeville Hydroelectric Partners.

e. Name of Project: Cooffeville Hydro Project.

f. Location: Tombigbee River near Coffeeville, Clarke County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce Wrobel, 91 Newbury Street, Boston, Massachusetts, 02116.

i. Comment Date: April 15, 1985.

j. Competing Application: Project No. 8813–000, Date Filed: December 24, 1984; Comment Due Date: April 1, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Coffeeville Lock and Dam, and would consist of: (1) A proposed powerhouse located on the north side of the river in the diversion channel housing one 3.5-generator and one 15.0–MW generator for a total installed capacity of 18.5 MW; (2) a proposed 69–kV transmission line approximately 2 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 55 GWh. All project energy would be sold to Alabama Power Company.

9l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

9. m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant could decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 8856–000.

c. Date Filed: January 2, 1985.

d. Applicant: Cook Electric, Inc.

e. Name of Project: North Fork Clackamas.

f. Location: In Mount Hood National Forest, on the North Fork of the Clackamas River, in Clackamas County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dale Hatch, Cook Electric, Inc., P.O. Box 1071, Twin Falls, Idaho 83303–1071.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A 72-inch-high inlet structure at elevation 1,350 feet; (2) a 10,560-foot-long, 54-inch-diameter penstock (3) a powerhouse containing four generating units with a combined capacity of 2,500 kW and an average annual generation of 15,838,900 kWh; and (4) a 10,600-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $32,250. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Portland General Electric.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 8829–000.

c. Date Filed: December 24, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Pit Falls Project.

f. Location: On Pit River in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Fred Castagna, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A diversion dam on Pit River at elevation 2,994 feet; (2) a 1,500-foot-long, 16-foot-diameter tunnel; (3) four 400-foot-long and 72-inch-diameter penstocks; (4) a powerhouse at elevation 2,946 feet with a total installed capacity of 3,000 kW; and (5) a 60–kV, 7000-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $80,000.

k. Purpose of Project: The estimated 13.0 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A, A6, A7, A9, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No. 8830–000.

c. Date Filed: December 24, 1984.

d. Applicant: Chilco, Inc.

e. Name of Project: Aikens Creek.

f. Location: On Aikens Creek in Humboldt County, California; within the Six Rivers National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: H. L. Childers, 9200 Shanley Lane, Auburn, California 95603.

i. Comment Date: May 10, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high diversion dam on Aikens Creek at elevation 700 feet; (2) a 24-inch-diameter, 2,870-foot-long conduit; (3) a 24-inch-diameter, 580-foot-long penstock; (4) a powerhouse with a total installed capacity of 500 KW and (5) a 12-kV, 500-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 18-month permit to conduct feasibility studies and prepare a license application at a cost of $15,000.

k. Purpose of Project: The estimated 2.0 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No. 8826–000.

c. Date Filed: December 24, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Young Falls Project.

f. Location: On Pit River in Lassen County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: May 3, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing intake structure of Mr. Steve Albaugh on Pit River at elevation 3,300 feet; (2) an existing 5,000-foot-long canal owned by Mr. Steve Albaugh which would be upgraded; (3) a 69-inch-diameter, 1000-foot-long penstock; (4) a powerhouse at elevation 3,250 feet with a total installed capacity of 1000 KW; and (5) a 12-kV, 1000-foot-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $80,000.

k. Purpose of Project: The estimated 2.2 million kWh produced annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No. 8693–000.

c. Date Filed: October 30, 1984.

d. Applicant: Northeast Hydrodevelopment Corporation.

e. Name of Project: West Hennicker Contoocook River.

f. Location: On the Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Normand Herbert, President, Northeast Hydrodevelopment Corporation, 6 Able Street, Hudson, New Hampshire 03051.

i. Comment Date: April 15, 1985.

j. Competing Applications: Projects Nos. 8351–000, 8460–000. Dates Filed: June 6, 1984, July 23, 1984, respectively.

k. Description of Project: The proposed project would consist of: (1) A 20-foot-high, 200-foot-long existing concrete dam owned by Contookcook Valley Paper Company, at elevation 427 feet msl; (2) an existing reservoir with a surface area of 10-acres, and a gross storage capacity of 70 acre-feet; (3) installation of 3 feet of flashboards raising the crest elevation to 430 feet msl; (4) an existing 1,400-foot-long canal system of varying widths and depths; (5) a proposed powerhouse containing three generating units and an additional generating unit just downstream of the gate structure with a combined project capacity of 1,440-kW; (6) a proposed 300-foot-long transmission line tying into the Public Service Company of New Hampshire system; and (7) a proposed 250-foot-long tailrace. The Applicant estimates a 8,500,000 kWh average annual energy production.

l. Proposed Scope of Studies under Permit: A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 30-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $40,000.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

15 a. Type of Application: Amendment of License.

b. Project No. 1715–000.

c. Date Filed: March 28, 1984.

d. Applicant: City of Springville, Utah.

e. Name of Project: Spring Canyon.

f. Location: Spring Canyon in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable J. Brent Haymond, Mayor, City of Springville, 50 South Main, Springville, Utah 84663.

i. Comment Date: April 15, 1985.

j. Description of Project: The Applicant proposes to amend its license by: (1) Increasing the water supply by reason of newly developed springs and collection system; (2) replacing the present 12-inch pipeline penstock with a new 24-inch one from the existing upper 2-million-gallon culinary water supply tank; (3) constructing a new powerhouse to contain a turbine-generator unit having a rated capacity of 500 kW and abandoning the existing powerhouse with the 138 kW capacity, increasing average annual energy output from 397 MWh to an estimated 3,810 MWh; (4) discharging flows from the new powerhouse into two lower culinary water supply tanks, an existing one of 1.5-million-gallon capacity and a proposed new one of 2.0-million-gallon capacity; (5) connecting the new powerhouse to a nearby existing transmission line; and (6) providing appurtenanit new facilities. All project works are located on City of Springville, Utah (City) property.

k. Purpose of Project: The project will operate in conjunction with the City's culinary water supply system; water may be pumped from the lower storage tanks to the upper one when necessary for city water supply and/or for pumped-storage generation. Project energy will be utilized by the City.

l. This notice also consists of the following standard paragraphs: B, C and D1.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8723–000.

c. Date Filed: November 16, 1984.

d. Applicant: Belmont Real Estate and Power, Inc.

e. Name of Project: Tioga River.

f. Location: Tioga River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Walter Steere, President, Belmont Real Estate and Power, Inc., P.O. Box 519, Belmont, New Hampshire 03220.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed would consist of: (1) An existing 16-foot-high, 80-foot-long masonry and granite block dam; (2) a reservoir with a surface area of 4 acres storage capacity of 35 acre-feet, and a normal water surface elevation of 746.2 feet m.s.l; (3) an existing intake structure at the right abutment; (4) an existing 48-inch-diameter, 800-foot-long buried penstock along the right bank then a new 1,200-foot-long buried penstock which would diagonally cross the river; (5) a new steel surge tank; (6) a new powerhouse containing one generating unit with a capacity of 75 kW and one generating unit with a capacity of 150 kW for a total installed capacity of 225 kW; (7) an existing 15-foot-wide, 75-foot-long and 10-foot-deep tailrace; (8) a new transmission line, 200 feet long; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 595,000 kWh. The existing dam is owned by Belmont Real Estate and Power, Inc.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

17 a. Type of Application: Minor License.

b. Project No.: 8657–000.

c. Date Filed: October 10, 1984.

d. Applicant: Greenwood Ironworks.

e. Name of Project: Harvell Dam.

f. Location: On the Appomattox River in Dinwiddle and Chesterfield Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joshua Greenwood, 420 Crove Avenue, Petersbury, Virginia 23803.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam about 400 feet long and maximum height of 9 feet; (2) an existing reservoir with a water surface area of seven acres and an estimated storage capacity of 49 acre-feet at elevation 12.63 feet, m.s.l; (3) a new powerhouse and fishway integral with the dam, about 25 feet long by 18 feet wide, which will house one new generating unit with an installed capacity of 150 KW; (4) a section of the existing powerhouse will be demolished. The remaining powerhouse structure, approximately 52 feet long by 27 feet wide, will house two additional generating units, each rated at 300 kW. The total installed project capacity (both powerhouses) will be 750 kW; (5) an existing headgate structure; (6) an existing concrete headrace, 170

feet long, and varying in width from seven feet to 13 feet; (7) new trashracks; (8) modifications to the existing tailrace with the addition of a walkway and fish screens; (9) about 270 feet of new transmission line at 2,300 volts, connecting the two powerhouses; (10) about 130 feet of new transmission line at 13,200 volts to interconnect with the VEPCO substation; and (11) appurtenant facilities. Owner of the dam and other project facilities is Virginia Electric Power Company. Applicant estimates that the average annual energy generation would be 2,930,220 kWh.

k. Purpose of Project: The applicant anticipates that project energy will be sold to Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18 a. Type of Application: Conduit Exemption.

b. Project No: 8514–000.

c. Date Filed: August 13, 1984.

d. Applicant: Borough of North East, PA.

e. Name of Project: North East Water Department Hydroelectric facility.

f. Location: Filtration Plant of the Borough of North East, PA, in Erie County, Pennsylvania.

g. Filed Pursuant to: F.P.A. (Act) [16 U.S.C. 823(a)].

h. Contact Person: Mr. Kenneth E. Maas, Borough Secretary 58 East Main St., North East, Pennsylvania 16428.

i. Comment Date: April 15, 1985.

j. Description of Project: The proposed project would consist of replacing a pressure reducing value in a 12-inch pipe with a generating unit with a rated capacity of 70-kW. The energy generated would be utilized by the Borough of North East, PA water filtration plant, with the excess being sold to Pennsylvania Electric Company. The Applicant estimates a 284,780 KWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

19 a. Type of Application: Minor License.

b. Project No: 8863–000.

c. Date Filed: January 7, 1985.

d. Applicant: Northeast Hydrodevelopment Corporation.

e. Name of Project: Buck Street.

f. Location: Suncook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Normand E. Hebert, President, Northeast Hydrodevelopment Corporation, 6 Able Street, Hudson, New Hampshire 03051.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 32-foot-long stone and masonry gravity dam (east) and an existing 12-foot-high, 144-foot-long stone and earth dam (west); (2) a three existing intake gates located at the east dam; (3) a new 30-foot-long power canal at the east dam; (4) a new powerhouse at the east dam containing one generating unit with a capacity of 41 kW, one generating unit with a capacity of 108 kW, and one generating unit with a capacity of 245 kW for a total installed capacity of 394 kW; (5) a new 200-foot-long tailrace; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,750,000 kWh. The existing dams are owned by the New Hampshire Water Resources Board, Concord, New Hampshire.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 8805–000.

c. Date Filed: December 17, 1984.

d. Applicant: Hydro Financing Company.

e. Name of Project: Falls Creek.

f. Location: In Gifford Pinchot National Forest, on Falls Creek, in Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Michael J. Hall, 5318 46th Ave. S.W., Seattle, Washington 98136.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation 2,300 feet; (2) a 2,500-foot-long, 56-inch-diameter low-head conveyance pipe; (3) a 10-foot-diameter, 60-foot-high surge tank; (4) a 5,300-foot-long, 48-inch-diameter penstock; (5) a powerhouse containing a single generating unit with a capacity of 9,400 kW and an average annual generation of 32,946,650 kWh; and (6) a 4.15-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to utilities.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 8735–000.

c. Date Filed: November 23, 1984.

d. Applicant: Lawrence A. Gamble.

e. Name of Project: Souadabscook II.

f. Location: Souadabscook Stream in Penobscot County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence A. Gamble, 35 Western Avenue, P.O. Box 250, Hampden, Maine 04444.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 75-foot-long, 9-foot-high concrete dam owned by the Town of Hampden; (2) proposed 2-foot-high flashboards; (3) a proposed 0.5-acre increase to the existing 2-acre reservoir at elevation 52 feet M.S.L.; (4) a proposed powerhouse at the dam containing one 125-kW turbine/generator unit and one 50-kW turbine/generator unit; (5) a proposed 200-foot-long underground transmission line; (6) a proposed Denil fishway; and (7) appurtenant facilities. The estimated average annual generation is 900 MWh.

k. Purpose of Project: Project power would be sold to Bangor Hydro-Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $2,000.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW

Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing applications for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a

preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules and Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coorination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 fo the Federal Power Act, t file within 45 days from the date of issuance of this notice appropriate terms and conditioins to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If any agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 8, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6039 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-228-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications; etc.; Cogentrix of North Carolina, et al.

Comment date: Thirty days from the publication on the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 8, 1985.

Take notice that the following filings have been made with the Commission:

1. Cogentrix of North Carolina, Inc.

[Docket No. QF85-228-000]

On January 31, 1985, Cogentrix of North Carolina, Inc., (Applicant) of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, 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 50 MW topping-cycle cogeneration facility will be located at Union Camp Corporation, 2051 N. Lane Avenue, Jacksonville, Florida. It will consist of three stoker-fired boilers and one extraction-condensing steam turbine generating unit. Extraction steam produced will be used both to supply feedwater heating and provide process steam for the Union Camp Corporation chemical manufacturing plant. The facility is scheduled to operate in June 1987. The primary energy source for the facility will be coal.

2. Corn Products

[Docket No. QF85-225-000]

On January 28, 1985, Corn Products, (Applicant) a Division of CPC International, Incorporated, International Plaza, Englewood Cliffs, New Jersey 07623, 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 49.9 MW topping-cycle cogeneration facility is to be located in Stockton, California. The facility will consist of a circulating fluidized bed boiler and an extraction-condensing steam turbine generating unit. The primary energy source for the facility will be either coal or petroleum coke. Extraction steam produced from the facility will be used in existing plant processes. The facility is expected to begin in the summer of 1985.

3. The Greater Detroit Resource Recovery Authority

[Docket No. QF85-236-000]

On February 8, 1985, The Greater Detroit Resource Recovery Authority, (Applicant) of 1110 City-County Building, Two Woodward Avenue, Detroit, Michigan 48226, 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 63 MW topping-cycle facility will be located at the northeast corner of the intersection of Russell Street and E. Ferry Avenue in Detroit. The primary energy source for the facility will be municipal solid waste. Extracted steam produced from the facility will be piped for sale to the Detroit Edison Company's heating system. Installation of the facility is scheduled to begin by the end of the first quarter, 1985.

4. The Greater Detroit Resource Recovery Authority

[Docket No. QF85-236-001]

On February 8, 1985, The Greater Detroit Resource Recovery Authority, (Applicant) of 1110 City-County Building, Two Woodward Avenue, Detroit, Michigan 48226, 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 63 MW topping-cycle cogeneration facility will be located at the northeast corner of the intersection of Russell Street and E. Ferry Avenue in Detroit. The primary energy source for the facility will be municipal solid waste. Extracted steam produced from the facility will be piped for sale to the Detroit Edison Company's heating system. Installation of the facility is scheduled to begin by the end of the first quarter, 1985.

5. MARMAC

[Docket No. QF85-192-000]

On February 12, 1985, MARMAC, (Applicant) of 6415 Katella Avenue, Cypress, California 90630, submitted for filing an amendment to its original application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. Notice of the original application was previously published in the **Federal Register** on February 13, 1985. No determination has been made that the submittal constitutes a complete filing.

The amendment changes the total amount of electricity output of the small power production facility from 22.5 MW to 49.5 MW. All other aspects of the original application are to remain intact.

6. Time Energy Systems, Inc.

[Docket No. QF85-253-000]

On February 19, 1985, Time Energy Systems, Inc., (Applicant) of 2900 Wilcrest Drive, Houston, Texas 77042, 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 5.6 MW small power production facility will be located at Crisstad Enterprises, Inc., Oregon State Highway 237, La Grande, Oregon. The primary energy source for the facility will be wood (Lo-BTU wood-gas produced by a wood gasification system). The facility is scheduled for start-up in the first quarter of 1986.

7. Zephyr Park Ltd.

[Docket No. QF85-252-000]

On February 19, 1985, Zephyr Park Ltd. (Applicant), of 18 Eastwood Court, Oakland, California 94611 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 small power production facility is located on Tehachapi-Willow Springs Road, Tehachapi, California. The facility consists, in part, of wind turbine/generators with a current electric power production capacity of 2.6 MW. The planned capacity of the facility is approximately 7 MW. The primary energy source is wind. The facility is interconnected with Southern California Edison Company.

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, 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 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. 85-6040 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST79-36-003, et al.]

Houston Pipe Line Co., et al.; Extension Reports

March 8, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas

for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before March 29, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 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 party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No.	Transporter seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-36-003 [1]	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	United Gas Pipe Line Co.	02-13-85	D	05-11-85
ST81-257-002 [1]	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Northern Natural Gas Co.	02-04-85	G	04-24-85
ST81-287-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Entex, Inc.	02-06-85	B	05-10-85
ST81-293-002	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	United Gas Pipe Line Co.	02-15-85	G	05-18-85
ST83-343-001 [1]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	ANR Pipeline Co.	02-08-85	G	03-31-85
ST83-363-001 [1]	Rocky Mountain Natural Gas Co., Inc., 1600 Sherman St., Denver, CO 80203	Northwest Pipeline Corp.	02-01-85	C	04-06-85
ST83-389-001 [1]	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Producer's Gas Co.	02-07-85	B	05-05-85
ST83-438-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Westar Transmission Co.	02-08-85	B	05-20-85
ST83-440-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Western Gas Interstate Co.	02-08-85	G	05-16-85
ST83-441-001 [1]	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	Southern Natural Gas Co.	02-01-85	C	05-01-85
ST83-449-001 [1]	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Brooklyn Union Gas Co.	02-05-85	B	05-05-85
ST83-482-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148	Texas Eastern Transmission Corp.	02-15-85	G	05-20-85
ST83-488-001	Nothern Natural Gas Pipeline Co., 2223 Dodge St., Omaha, NE 68102	Intrastex Gas Co.	02-14-85	B	06-01-85
ST83-553-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	El Paso Hydrocarbons Co.	02-14-85	B	06-24-85
ST83-560-001	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	South Texas Gathering Co.	02-04-85	B	05-05-85
ST83-582-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Producer's Gas Co.	02-14-85	B	06-22-85
ST83-759-001 [1]	Mississippi River Transmission Corp., 9900 Clayton Rd., St. Louis, MO 63124	KN Energy, Inc.	02-04-85	G	05-01-85
ST84-162-001 [1]	Delhi Gas Pipeline Corp., Co., 1700 Pacific Ave., Dallas, TX 75201	United Gas Pipe Line Co.	01-30-85	C	04-25-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
Note: The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-6115 Filed 3-13-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-3-5-002]

Midwestern Gas Transmission Co.; Tariff Filing

March 8, 1985.

Take notice that on March 1, 1985, Midwestern Gas Transmission Company (Midwestern) filed the following sheets to its FERC Gas Tariff:

Original Volume No. 1

Ninth Revised Sheet No. 8
Substitute Original Sheet No. 169-B
Substitute First Revised Sheet No. 169-A
Substitute Fourteenth Revised Sheet No. 6

Midwestern requests effective dates of November 1, 1984 for Substitute Sheet Nos.169-A and 169-B and April 1, 1985 for Substitute Sheet No. 6 and Revised Sheet No. 8. Upon acceptance of these substitute sheets, Midwestern requests the Commission to withdraw Original Sheet No. 169-B, First Revised Sheet No. 169-A and Fourteenth Revised Sheet No. 6 filed in Docket Nos. RP85-102 and TA85-3-5-001.

Midwestern states that the purpose of this filing is (1) to reflect the reduced off-peak rates under the Amended TransCanada Contracts effective April 1, 1985 in Rate Schedules CR-2, CRL-2, SR-2 and I-2 (Midwestern's Other Customers) pursuant to section 2 of the Northern System PGA clause as revised in Midwestern's February 20, 1985 tariff filing in Docket Nos. TA85-3-5-000, TA85-3-5-001 and RP85-102-000, (2) to withdraw the transitional surcharge of 4.10 cents per Dkt reflected in Fourteenth Revised Sheet No. 6 proposed to be effective February 1, 1985, and (3) to amortize the Other Customers' share of the unrecovered Purchased Gas Cost Account as of October 31, 1984 and the accumulated balances for the period November 1984 through January 1985 through the regular Demand and Gas Surcharges for Amortizing the Unrecovered Purchased Gas Cost Account, which under the revised Northern System PGA clause in Midwestern's February 20th filing will be effective April 1 through October 31, 1985. Midewestern states that the current Purchased Gas Cost Adjustment reflected on Substitute Fourteenth Revised Sheet No. 6 consists of Unit Demand Rates Changes of $0.11 per Mcf for Rate Schedules CR-2 and CRL-2, 0.9 cents per Mcf for Rate Schedule SR-2, 0.36 cents per Mcf for Rate Schedule I-2

and a negative Unit Gas Rate Change of 42.60 cents per Dkt.

Midwestern states further that the Unit Rate Changes are based upon the demand and commodity gas rates under the Amended TransCanada Contracts effective April 1, 1985, and Midwestern's estimated sales billing units and system fuel requirements for the April-October 1985 PGA period.

Midwestern states that Substitute Sheet Nos. 169-A and 169-B revise section 3.5(b) and (c) of the Northern System PGA clause included in Midwestern's February 20th filing to recover the portion of the Northern System Unrecovered Purchased Gas Cost Account as of October 31, 1984 allocated to Midwestern's Other Customers and the accumulated balances in the Unrecovered Account for November, December and January through the Demand and Gas Surcharges for Amortizing the Unrecovered Purchased Gas Cost Account effective April 1, 1985. Substitute Fourteenth Revised Sheet No. 6 implements this change through a negative Demand Surcharge of $.31 per Mcf and a Gas Surchagre of 12.48 cents per Dkt.

Midwestern states that it is proposing to change the timing of the recovery of Unrecovered Purchased Gas Costs attributable to Midwestern's Other Customers because it has been advised that a number of its small customers cannot reflect in their rates in a timely manner the Transitional Surcharge that Midwestern proposed in its February 20th filing to make effective February 1, 1985. Midwestern notes that the revisions to section 3.5(c) of the Northern System PGA clause do not affect the amount of the recovery of Unrecovered Purchased Gas Costs from Midwestern's Other Customers.

In order to permit Substitute Sheet Nos. 169-A and 169-B to become effective November 1, 1985 as proposed, Midwestern respectfully requests waiver of §§ 1.2 and 1.3 of Article XVIII of the General Terms and Conditions, § 154.38(d)(4)(iv)(a) of the Commission's Regulations, and the 30-day notice provisions of § 154.22 of the Regulations. Although Midwestern believes that no other waivers are required to make this filing effective as proposed as long as the Commission allows the tariff sheets filed on February 20, 1985 to become effective as proposed, Midwestern respectfully requests that the Commission grant any waivers it deems necessary for acceptance of this filing.

Midwestern states 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 motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 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 March 15, 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. 85-6116 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-325-002]

Natural Gas Pipeline Co. of America; Second Amendment

March 8, 1985.

Take notice that on February 15, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP84-325-002 a second amendment to its pending application filed on March 29, 1984, as substantially amended on May 16, 1984, in docket Nos. CP84-325-000 and CP84-325-001, respectively, pursuant to section 7 of the Natural Gas Act. Such second amendment application seeks authorization to construct and operate certain facilities and to provide transportation service as a competitive alternative to two other transportation systems proposed by other parties, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate:

(a) Approximately 146 miles of forty-two inch pipeline to be located from the terminus of Northern Border Pipeline Company's system near Ventura, Iowa, through Hancock, Cerro Gordo, Franklin, Hardin, Grundy, Marshall, Tama, Poweshiek, Iowa, and Keokuk Counties, Iowa, to Applicant's Amarillo Line at Compressor Station No. 109. Proposed capacity for this segment is 890,100 Mcf of gas per day.

(b) Approximately 52.5 miles of thirty-six inch pipeline looping of Applicant's Oklahoma extension in Beckham, Washita, and Kiowa Counties, Oklahoma; approximately 83.3 miles of forty-two inch pipeline looping of Applicant's Oklahoma extension in Kiowa, Caddo, Grandy, Stephens, and Carter Counties, Oklahoma; and 8,000 horsepower of additional compression and certain modifications of existing units at Applicant's compressor station No. 156 in Kiowa County, Oklahoma.

(c) Approximately 239 miles of forty-two inch pipeline to be located in Carter and Love Counties, Oklahoma, and Cooke, Grayson, Fanning Hunt, Delta, Hopkins, Franklin, Titus, Morris, and Cass Counties, Texas; and related compression (totaling 28,500 horsepower) at new compressor stations to be located in Carter County, Oklahoma, and Grayson County, Texas. Proposed capacity of this segment is 890,100 Mcf of gas per day. This segment is known as the Texas Crossover.

(d) Certain minor facilities consisting of taps and meters to be located on Applicant's Gulf Coast system in Jefferson and San Jacinto Counties, Texas, and Cameron Parish, Louisiana, as well as certain piping modifications (to permit reversal of gas flow) at Compressor stations on Applicant's system in Gage County, Nebraska, Ford County, Kansas, Kiowa, Dewey, and Woodward Counties, Oklahoma, Hutchinson, Gray, Harrison, Angelina, Montgomery, and Liberty Counties, Texas, and Cameron Parish, Louisiana.

Applicant states that all of the facilities above are to be known as the MIDCONtinental Transportation System.

Applicant states that the estimated cost of the proposed pipeline and compressor facilities to be constructed over a two-year period, including $3.6 million in non-jurisdictional facilities, is $506.3 million, which cost would initially be financed with funds on hand, borrowings under Applicant's revolving credit arrangements or short-term financing.

Applicant proposes to transport the following volumes of gas by means of a two-year build-up:

Shippers	Nov. 1, 1987	Nov. 1, 1988
Tennessee	244,500	407,500
Boundary (Phase II)	31,500	52,500
Texas Eastern	90,663	151,105
Algonquin	30,597	50,979
Transco	150,493	253,822
Sub-total	547,743	912,906
Less Northern Border: Fuel @ 2.5 percent	(13,693)	(22,823)
Total	534,050	890,083

Such system, and the transportation service performed thereby, is said by Applicant to be competitive with, and

alternative to the proposed Can-Am Pipeline Project, formerly known as the U.S. Route, which has been described in the applications of Ohio Interstate Pipeline Company Docket No. CP84–318–000, March 26, 1984, ANR Pipeline Company, Docket No. CP84–363–000, April 24, 1984, and Northern Border Pipeline Company, Docket No. CP84–407–000, May 11, 1984.

Applicant also states that its proposal is a competitive alternative to a project involving U.S. facilities described in the applications of Niagara Interstate Pipeline System, Docket No. CP83–170–001, March 23, 1983, and Great Lakes Gas transmission Company, Docket No. CP84–540–001, October 12, 1984. Applicant maintains that its proposal would be less costly and would make better use of existing pipeline systems.

By virtue of the Commission orders of July 5, 1983 (24 FERC ¶ 61,003), and October 2, 1984 (29 FERC ¶ 61,006) this amended application is consolidated in ongoing hearing proceedings in Docket No. CP81–107, *et al.*

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 29, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who are parties to the proceeding in Docket No. CP81–107, *et al.*, need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6117 Filed 3–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–245–000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

March 8, 1985.

Take notice that on January 24, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85–245–000, as supplemented on February 12, 1985, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for an eligible end-user under the certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposed to transport up to 7.5 billion Btu's of natural gas per day on an interruptible basis on behalf of Memphis Light, Gas and Water Division (Memphis), as Agent for E. I. du Pont de Nemours and Company (DuPont), pursuant to a gas transportation agreement dated December 11, 1984.

Texas Gas states this transportation service commenced on December 14, 1984, pursuant to the automatic provisions of § 157.209(a)(2) of the Commission's Regulations. Texas Gas states that the volumes of gas are being purchased from Cal Gas Corporation and transported from the tailgate of the Beacon gasoline plant located in Webster Parish, Louisiana, and redelivered to Memphis, as agent for DuPont, at the existing Germantown sales station located in Shelby County, Tennessee, for redelivery to the DuPont plant in Memphis, Tennessee, by Memphis. Texas Gas states that DuPont has advised that there is an intermediary fee of 3.0 cents per million Btu that would be charged by U.S. Natural Gas Clearinghouse and that Texas Gas would charge Memphis its Rate Schedule TSC–1 for Rate Schedule G sales customers plus the GRI funding unit of 1.25 cents per million Btu.

It is explained that the term of the transportation agreement for this service may be extended from June 30, 1985, to October 31, 1985, provided such transportation service is authorized by Commission Regulations. Texas Gas indicates the end use of the gas is for feedstock, process heat, and boiler fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–6118 Filed 3–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–52–000; TA85–2–52–001; RP84–77–002]

Western Gas Interstate Co.; Proposed Out-of-Period PGA Rate Adjustment

March 8, 1985.

Take notice that on March 1, 1985, Western Gas Interstate Company ("Western") submitted for filing Fourth Revised Sheet No. 3A, Second Revised Sheet No. 3B, and First Revised Sheet No. 24 to its FERC Gas Tariff, Alternate Revised Volume No. 1. Said tariff sheets are proposed to become effective on February 1, 1985.

Western states the proposed change in rates reflected on Fourth Revised Sheet No. 3A is being filed in accordance with its Tariff's PGA clause which permits the recovery of increases in the cost of gas and of unrecovered purchased gas costs. Western further states Fourth Revised Sheet No. 3A provides for: (1) A decrease in Western's total rate under its Rate Schedule G–N from $3.5187 to $3.4570; (2) an increase in Western's total rate under its Rate Schedule G–S from $3.6706 to $3.9848; and (3) no change in Western's total rate under its Rate Schedule G–R. These changes are based on Western's cost of purchased gas from August 1, 1984 through December 31, 1984. The decrease in the total rate under Western's Rate Schedule G–N results from a combination of factors including lower gas costs due to gas supply contract renegotiations. The increase in the Rate Schedule G–S rate results from the effect of underrecoveries of purchased gas costs, all as more fully described in Western's filing which is on file with the Commission and open to public inspection.

Western also states that First Revised Sheet No. 24 would change Western's semi-annual purchased gas adjustment dates from May 1 and November 1 to February 1 and August 1 in an effort to be more responsive to the needs of its irrigation customers.

Western states that copies of this filing were served upon Western's transmission system customers and the 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 85-6119 Filed 3-13-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53069; FRL-2772-3]

Premanufacture Notices; Monthly Status Report for December 1984

Correction

In FR Doc. 85-2953 beginning on page 5125 in the issue of Wednesday, February 6, 1985, make the following corrections:

1. On page 5126, in Table 1, in entry 85-297, in the second column, "di isocyanate" should read "diisocyanate"; in entry 85-324, in the second column, "heteromonocyclic" should read "heteromonocyclic phenol".

2. On page 5127, in Table II, in entry 85-104, in the second column, "ether" should read "alkenyl ether"; in entry 85-105, in the second column "alkenyl ether" should read "ether"; in entry 85-151, in the second column, "Fluoranthennediamine-" should read "Fluoranthenediamine-"

3. On page 5128, in Table II, in entry 85-193, in the second column, "-methoxybenzeensulfonate" should read "-methoxybenensulfonate"

4. On page 5128, in Table III, in entry 84-341, in the second column, in the first line, "-demethyl-" should read "-dimethyl-".

5. On page 5129, in Table III, in entry 85-7, in the second column, "Spiro[sobenzofuran" should read "Spiro[isobenzofuran".

6. On page 5130, in Table IV, in entry 84-179, in the second column, in the first line, "-penyl-" should read "-phenyl-"

7. On page 5131, in Table V, in entry 84-901, in the second column, "Bis(tetrabromobispheno" should read "Bis(tetrabromobisphenol".

BILLING CODE 1505-01-M

[OPTS-53068; FRL-2769-4]

Premanufacture Notices; Monthly Status Report for November 1984

Correction

In FR Doc. 85-2563 beginning on page 4898 in the issue of Monday, February 4, 1985, make the following corrections:

1. On page 4899, in the table, in entry 85-112, in the second column, "anhydride" should read "anhydride copolymer"; in entry 85-115, in the second column, "polyisocyanate" should read "polyisocyanate adduct"; in entry 85-122, in the second column, "sale" should read "salt"; in entry 85-148, in the last column, "Feb. 1985." should read "Feb. 13, 1985.".

2. On page 4902, in Table III., in entry 84-1107, in the second column, "Cooper" should read "Copper".

3. On page 4903, in Table IV, in entry 83-728, in the last column, "Oct. 1984." should read "Oct. 30, 1984."; in entry 84-336, in the second column, "methly" should read "methyl"; in entry 84-387, in the second column, "benzly" should read "benzyl"; in entry 84-420, in the second column, in the first line, "-1h/pyrazol-" should read "-1H-pyrazol-"; in the second line "acid-triplotassium" should read "acid-tripotassium"; in entry 84-580, in the second column, "Isoproply" should read "Isopropyl"; in entry 84-843, in the third column, "FR 2576" should read "FR 25676".

4. On page 4904, in Table IV, in entry 84-1033, in the third column, "(32113)" should read "(32112)"; in entry 84-1069, in the second column, "either" should read "ether".

5. Also on page 4904, in Table V, the entry now reading "84-655" should read "84-665"; in entry 84-738, in the second column, "Clycol" should read "Glycol".

6. On page 4905, in Table V, in entry 84-881, in the second column, "ploymer" should read "polymer".

BILLING CODE 1505-01-M

[OPP-50630; RL-2788-6]

Issuance of Experimental Use Permits; American Hoechst Corp., et al.

Correction

In FR Doc. 85-5133 beginning on page 9124 in the issue of Wednesday, March 6, 1985, make the following corrections:

1. On page 9124, in the third column, in paragraph "52300-EUP-1", in the sixth line, "$2-10^{11}$, should read "2×10^{11}.

2. On page 9125, in the first column, in the authority, in the first line, "95-369" should read "95-396".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 21, 1985

On January 17, 1985, the Federal Communications Commission published a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 2596) which proposed to revise a collection of information requirement in the Commission's rules. The Commission has submitted the collection of information requirement contained in the proposed rule to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980, P.L. 96-511.

Copies of the submission are available from Terry Johnson, Agency Clearance Officer, (202) 634-1535. Persons wishing to comment on this proposed information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

Title of Rulemaking: MM Docket No. 85-5, Amendment of Part 73 of the Commission's Rules concerning the filing of network affiliation and transcription contracts

Title of Information Collection: Section 73.3613, Filing of Contracts

OMB Number: 3060-0185

Action: Revision

Respondents: Licensees of commercial or noncommercial AM, FM, TV, or International broadcast stations

Estimated Annual Burden: 16,603 Responses; 8,752 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-6050 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

Circle L, Inc. et al.; Hearing Designation Order

In re Applications of:

Circle L, Inc.	MM Docket No. 85-50; File No. BRCT-830531KP.
For renewal of license of Station KCRL-TV, Reno, Nevada.	

Washoe Broadcasting Co.	File No. BPCT-830901KM.

For construction permit, Reno, Nevada.

Adopted: February 21, 1985.
Released: March 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned application for renewal of the license of Station KCRL–TV, Channel 4, Reno, Nevada, filed by Circle L, Inc.; the mutually exclusive application of Washoe Broadcasting Company (Washoe) for a construction permit for a new television station to operate on Channel 4 in Reno; a Motion to Dismiss the Washoe application, filed by Circle L; and related pleadings.

2. On March 12, 1984, Circle L filed a motion to dismiss Washoe's application on the grounds that, at the time the Washoe application was filed, it was patently not in accordance with Section 73.636 (now Section 73.3555(a)(1)) of the Commission's Rules, relating to multiple ownership. The motion is based on the fact that, at the time the TV application was filed, Washoe's principals had an application pending for a new FM radio station in Carson City, Nevada, and Carson City would be within the predicted City Grade contour of the proposed television station. Thus, Circle L argues, the Washoe TV application should not have been accepted for filing because it was in clear violation of the so-called "one-to-a-market" rule. On September 26, 1984, however, less than a month after Washoe filed its TV application and more than five months before Circle L filed its motion to dismiss, Washoe voluntarily dismissed its Carson City FM application. In similar situations, where the same applicant has co-pending applications which conflict with the rules so that only one of them can be granted consistent with the multiple ownership rules, the Commission has allowed the applicant to elect which one of the conflicting applications it wished to prosecute, making it clear that both could not be prosecuted simultaneously. See *RKO General, Inc. (WHBQ–TV)*, Memorandum Opinion and Order, released November 23, 1984, FCC 84–535. Had Washoe chosen to prosecute both applications, Commission policy would have compelled an election and, having made an election, the applicant would have been free to prosecute the surviving application. Here, Washoe made its election by dismissing the Carson City FM application and, in harmony with the Commission's policy, is free to prosecute the TV application. Accordingly, Circle L's motion to dismiss will be dismissed as moot.

3. No determination has been reached that the tower height and location proposed by Washoe would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[1]

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issue specified below.

5. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Washoe Broadcasting Company would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidenced adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further ordered, that the Motion to Dismiss filed by Circle L, Inc. IS DISMISSED as moot.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issue specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

[1] We are not in receipt of the Federal Aviation Administration's determination for Washoe.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–6049 Filed 3–13–85; 8:45 am]

BILLING CODE 6712–01–M

Florida Coast Communications Co., et al.; Hearing Designation Order

In re Applications of:

Florida Coast Communications Co.	MM Docket No. 85–57; File No. BPCT-840830KK.
Ralph W. Gabbard	File No. BPCT-841031KH.
Qualivision of Lee County, Inc.	File No. BPCT-841031KK.
Tice Television Co	File No. BPCT-841031KL.
Florida Telecasting, Inc	File No. BPCT-841031KN.
Reginald L. Duff	File No. BPCT-841031KO.

For construction permit, Tice, Florida.

Adopted: February 25, 1985.
Released: March 8, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 49, Tice, Florida; and a motion for leave to amend and an accompanying amendment filed by Tice Television Company.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B)

[1] The deadline for filing amendments to the above-captioned applications was December 19, 1984. Tice Television Company filed a motion for leave to amend and an amendment to its application on January 31, 1985. The amendment establishes Tice Television's financial qualifications. The motion and the amendment have been reviewed and good cause exists for accepting the amendment. Therefore, the motion will be granted and the amendment accepted for filing. On February 11, 1985, Florida Telecasting, Inc. (FTI) filed comments on Tice Television's petition for leave to amend. FTI states that Tice Television should be required to provide complete information concerning any changes in its ownership structure that may occur as a result of its financial arrangements. We agree with FTI that any such changes must be reported to the Commission pursuant to Section 1.65 of the Rules.

contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[2]

4. The overall height above ground (OHAG) of the tower specified by Reginald L. Duff in Section V–C, item 6, FCC Form 301, does not agree with the OHAG specified in Section V–G, item 5. Mr. Duff will be required to submit an amendment to his application to provide the correct OHAG of his tower, to the presiding Administrative Law Judge, within 20 days after this Order is released.

5. Section 73.3580 of the Commission's Rules requires that applicants for construction permits for new broadcast stations give local notice of the filing of their applications in a daily newspaper of general circulation in the community which the station is to serve. Completion of the publication may occur within 30 days before or after tendering of the application for filing. Compliance or intent to comply with the public notice requirement must be certified in Section VII, FCC Form 301. Mr. Duff has not completed Section VII. Therefore, Mr. Duff will be required to submit his response to Section VII, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent with respect to issue 1.

9. It is further ordered, that Tice Television Company's January 31, 1985, motion for leave to amend is granted and the accompanying amendment is accepted for filing.

10. It is further ordered, that Reginald L. Duff shall submit an amendment which provides the correct overall height above ground of his tower, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. It is further ordered, that Reginald L. Duff shall amend his application to include a response to Section VII, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–6048 Filed 3–13–85; 8:45 am]

BILLING CODE 6712-01-M

[2] We have not received a copy of the Federal Aviation Administration's determination for Florida Coast Communications.

Mobile Communications, Inc., and Gulf Coast Electronics, Inc.; Order Designating Applications for Hearing

In re applications of:

Mobile Communications, Inc.	CC Docket No. 85–59, file No. 24551–CD–P–1–82.
For construction permits to add new locations to operate on frequency 454.025 MHz for Station KUC928 in the Public Land Mobile Service at Wallisville, and Vidor, Texas	File No. 20609–CD–P–1–83.
Gulf Coast Electronics, Inc.	
For a construction permit for an additional location for Station WXS216 to operate on frequency 454.025 in the public Land Mobile Service at Mauriceville, Texas.	File No. 24752–CD–P–1–82.

Adopted February 27, 1985.

Released March 12, 1985.

By the Common Carrier Bureau.

1. On August 20, 1982, Mobile Communications, Inc. (Mobile) filed an application for a new location in Wallisville, Texas (File No. 24551–CD–P–1–82). The application was accepted for filing by Public Notice of September 8, 1982. On September 21, 1982, Gulf Coast Electronics, Inc. (Gulf Coast) filed the captioned mutually exclusively application. This application was accepted for filing in the Public Notice of October 6, 1982. Mobile, the original applicant in the market, filed another application (File No. 20609–CD–P–1–83) on November 24, 1982, for an additional location to operate on frequency 454.025 MHz in Vidor, Texas. Since Gulf Coast's application is for an additional facility, these applications are not subject to lottery selection. *Random Selection Lotteries*, Gen. Docket No. 81–768, 93 FCC 2d 952 (1983), recon. granted in part, FCC 84–596, released December 4, 1984.

2. After careful examination of the applications and the informal objections and responses filed, we find the first Mobile application (File No. 24551–CD–P–1–82) and the application filed by Gulf Coast were timely filed and that both applicants are legally, technically, and otherwise qualified to construction and operate the proposed facilities. Further, we find that these applications are electrically mutually exclusive and should be designated for comparative hearing to determine which applicant would better serve the public interest. We also find that the second application filed by Mobile for a station in Vidor, Texas (File No. 20609–CD–P–1–83) was filed more than 60 days after Public Notice of its original application and thus was not timely under section 22.31 of the Commission's rules. See *Berks*

County Communications, Inc., Mimeo No. 4435, released June 8, 1982.[1]

3. Accordingly, IT IS ORDERED, pursuant to Section 22.31 of the Commission's rules, that the second application filed by Mobile Communications, Inc., File No. 20609–CD–P–1–83, is DISMISSED as unacceptable for filing.

4. Further, IT IS ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, that the application of Mobile Communications, Inc., File No. 24551–CD–P–1–82, and the application of Gulf Coast Electronics, Inc., File No. 24752–CD–P–1–82, to operate on frequency 454.025 MHz are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 39 dBu contours,[2] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[3] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the reference applications would best serve the public interest, convenience, and necessity.

5. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

6. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

7. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

8. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

9. The Secretary shall cause a copy of this order to be published in the Federal Register.

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85–6046 Filed 3–13–85; 8:45 am]

BILLING CODE 6712–01–M

[1] On March 15, 1983, Gulf Coast filed an informal request that the Commission dismiss or defer action on Mobile's second application (File No. 20609–CD–P–83) pending the negotiation of a compromise between the applicants. Mobile responded on April 5, 1983, that there was no basis for dismissal of its application and that Gulf Coast's informal objections should have been presented earlier. We find no need to address these arguments in light of our disposition of this application.

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 39 dBu contour as calculated from Section 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[3] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

Puget Television, et al.; Hearing Designation Order

In re Applications of:

Jacque Hodges, et al., d/b/a Puget Television.	MM Docket No. 85–58; File No. BPCT–840622KE.
Duane Tomko, a partnership.	File No. BPCT–840807KE.
Seattle Channel 45 Broadcasting, Inc..	File No. BPCT–840809KG.
Allen E. Hom	File No. BPCT–840809KL.

For Construction Permit for New Television Station, Seattle, Washington.

Adopted: February 26, 1985.

Released: March 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 45, Seattle, Washington.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower heights and locations proposed by Duane Tomko and Seattle Channel 45 would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. In Section I, Item 1, FCC Form 301, Duane Tomko indicates that the applicant is a general partnership, but in Section II, Item 5(a), he refers to limited partners. Consequently, it is unclear whether the applicant is a general partnership or a limited partnership. The application further shows that Mr. Tomko has a 51% interest in the partnership and unidentified limited partners will have the remaining 49%, but the application does not identify any other partners, limited or otherwise. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. Consequently, the required information must be furnished. If the applicant is a limited partnership, however, the attribution principles articulated in *Attribution of Ownership Interests)* 55 RR 2d 1465 (1984), (reconsideration pending) apply. In that document, the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and "if the limited partner is not involved in any material respect in the business or operation of the station." *Id.* at 1485 and § 73.3515(a)(2). Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there may be no need to provide information as to the limited partners if Tomko can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission

[1] On October 16, 1984, after the "B" cut-off date, Seattle Channel 45 Broadcasting, Inc., filed an amendment to its application. The amendment contained updated ownership information required by Section 1.65 of the Rules. The amendment will be accepted for 1.65 purposes only.

retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Mr. Tomko will be required either to state that the limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the limited partners' interests. If the applicant is a general partnership, the applicant must furnish all required information on each partner.

5. Seattle Channel 45 and Allen E. Hom each proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of either of these applications, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 RR 2d 416 (1966).

6. The proposed antenna for Seattle Channel 45 is to be mounted on the tower of AM Radio Station KMPS, Seattle, Washington. Consequently, any grant of a construction permit to Seattle Channel 45 will be conditioned to ensure that KMPS's radiation pattern is not adversely affected by the construction of the proposed station.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Duane Tomko and Seattle Channel 45 Broadcasting, Inc., whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that, in the event of a grant of the application of Seattle Channel 45 Broadcasting, Inc., the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KMPS, Seattle, Washington, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

10. It is further ordered, that in the event of a grant of the application of Seattle Channel 45 Broadcasting, Inc. or Allen E. Hom, the construction permit shall be conditioned as follows:

Subject to the condition that operations with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

11. It is further ordered, that Duane Tomko shall submit the information and documents required by Paragraph 5, *supra*, regarding the nature and composition of the applicant partnership, to the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division; Mass Media Bureau.

[FR Doc. 85-6047 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

Tequesta Broadcasting Corp.; et al.; Hearing

In re Applications of:

Tequesta Broadcasting Corp.	MM Docket No. 85-60, file No. BPCT-840920KI.
Southern Florida Broadcasting Company.	File No. BPCT-840927KF
Tequesta Television, Inc	File No. BPCT-841129KE
William H. Dilday, Jr. and Ruth Sperling, et al d/b/a Tequesta Television Partners Limited Partnership.	File No. BPCT-841129KI
Triple J. Properties, Inc	File No. BPCT-841129KL
Tequesta Coastal Broadcasting Limited.	File No. BPCT-841129KO
Zephyr Broadcasting Corporation.	File No. BPCT-841129KP
Old Salt Broadcasting Company, Inc.	File No. BPCT-841129KQ
Martin Telecommunications, Inc.	File No. BPCT-841129KR
G and I Ltd	File No. BPCT-841129KS
Sprit Broadcasting Corporation.	File No. BPCT-841129KT
Rodriguez-Barnett and Associates, Ltd.	File No. BPCT-841129KU

For Construction Permit Tequesta, Florida.

Adopted: February 28, 1985.

Released: March 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive aplications for a new commercial television station to operate on Channel 25, Tequesta, Florida, and a late-filed amendment submitted by Rodriguez-Barnett and Associates, Ltd. (Rodriguez-Barnett).[1]

[1] Rodriguez-Barnett filed and amendment to its application on January 16, 1985, the "B" cut-off date, but the amendment did not contain an original signature. On January 17, 1985, the applicant filed an amendment, which was not accompanied by a motion for leave to amend, correcting the omission.

Continued

2. The effective radiated visual power, height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to any of the applicants.

3. No determination has been reached that the tower height and location proposed by Southern Florida Broadcasting Company (SFBC), Tequesta Television Partners Limited Partnership, Old Salt Broadcasting (Old Salt), and Rodriguez-Barnett, each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[2]

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0 degrees corresponds to True North and tabulated at least every 10 degrees plus any minima or maxima. Old Salt has not supplied this data. Rodriguez-Barnett has provided that tabulation but it was not tabulated in accordance with § 73.685(f). Accordingly, the applicants will each be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

5. Section II, item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. Triple J. Properties, Inc. (Triple J) did not answer item 10. Accordingly, Triple J. will be given 20 days from the release date of this Order to submit an amendment with its response to item 10, to the presiding Administrative Law Judge.

6. Rodriguez-Barnett is a limited partnership. The general partners have been identified; however, the applicant indicates that the limited partners are to be admitted later. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 [1984], the Commission stated that henceforth limited partnership interests were not attributable for the purpose of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and shows that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station. *Id.* at 1485. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Rodriguez-Barnett can sumit the necessary certification and showing. If the certification or showing is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interest in the same area. *Id.* at 1490. Accordingly, Rodriguez-Barnett, upon determining its limited partners, will be required either to state that its limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interest, identify the other local media and state the nature or extent of the ownership interest.

7. G and I Ltd. (G & I) is also a limited partnership. G & I has certified that its limited partnership agreement conforms to the ULPA and that its limited partners will "not be involved in any material respect in management or operation" of the proposed station. Therefore, we can determine that the limited partners have no attributable interests for the purposes of our multiple ownership rules. However, G & I has not stated that its limited partners have no other media interests subject to the Commission's cross interest policy. See paragraph 6, *supra*. Therefore, G & I will be required to submit an amendment which states that its limited partners do not have any other media interests subject to the cross-interest policy or identify the partners with such interest, identify the other local media and state the nature or extent of the ownership interest.

8. Section 73.1125 of the Commission Rules requires that the main studio of a television station be located within the city of license, but that, upon a showing of good cause, the Commission may allow the main studio to be located outside the community. Rodriguez-Barnett has indicated that it proposes to locate its main studio outside of Tequesta. However, it has not demonstrated that such operation would be consonant with the public interest. Accordingly, an issue will be specified to determine if good cause exists for locating the studio outside the city of license and whether to do so would be consistent with the public interest.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to those applicants in paragraph 3, *supra*, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To detemine with respect to Rodriguez-Barnett and Associates, Ltd., whether good cause exists for locating its main studio outrside the city of license and whether to do so would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

Since all of the parties had timely notice of the contents of the amendment, none were prejudiced and we believe that the equities favor accepting the amendment.

[2] The Commission has not received a copy of the Federal Aviation Administration's (FAA) study for SFBC. Old Salt must notify FAA of its proposed construction.

11. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

12. It is further ordered, that the amendment of January 17, 1985, filed by Rodriguez-Barnett and Associates, Ltd. IS ACCEPTED.

13. It is further ordered, that Old Salt Broadcasting Company Inc., Rodriguez-Barnett and Associates, Ltd. shall each submit an amendment providing the information required by Section 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to Chief, TV Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

14. It is further ordered, that Triple J. Properties, Inc. shall submit an amendment containing its response to Section II, item 10, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, that Rodriguez-Barnett and Associates, Ltd. shall submit the certification, statement and/or information required by paragraph 7, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

16. It is further ordered, that G and I Ltd. shall submit the statement or information required by paragraph 7, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

18. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and the manner prescribed in such Rule and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-6045 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

Telecrafter Corp. et al.; Memorandum Opinion and Order

In the matter of:

In re Applications of:	CC Docket No. 85-31
Telecrafter Corporation	File No. 50197-CM-P-82.
and	
Broadcast Data Corp.	File No. 50274-CM-P-82.

For Construction Permit in the Multipoint Distribution Service for a new station at Carlsbad, New Mexico.

Adopted February 4, 1985
Released March 5, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Carlsbad, New Mexico. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications At of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Telecrafter Corporation Broadcast Data Corp. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned to the following:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

(b) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing in *Cellular Mobile Systems of Texas, Inc., et al.*, CC Docket No. 83-660, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. See also *Rule 1.4(b)(2)*.

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-5937 Filed 3-13-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

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 package for clearance in accordance

with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0024.
Title: General Admission Class Attendance Roster.
Abstract: This form is used to collect certain basic information from students who are attending National Fire Academy Field courses for inclusion into the student recordkeeping system which has the capability of producing a student transcript for accreditation and the student's personal use.
Type of Respondents: Individuals or Households.
Number of Respondents: 15,000.
Burden Hours: 500.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 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: March 6, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–6061 Filed 3–13–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

Western Community Savings and Loan Association, El Cerrito, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in § 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. § 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Western Community Savings and Loan Association, El Cerrito, California on March 8, 1985.

Dated: March 11, 1985.

John M. Buckley, Jr.

Acting Secretary.

[FR Doc. 85–6096 Filed 3–13–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Firstway Financial, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85–4945), published at page 8395 of the issue for Friday, March 1, 1985.

Firstway Financial, Inc., Waynesboro, Pennsylvania has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank and Trust Company, Waynesboro, Pennsylvania.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–6066 Filed 3–13–85; 8:45 am]

BILLING CODE 6210–01–M

Louisiana Bancshares, Inc., 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 April 4, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to acquire 100 percent of the voting shares of The Raceland Bank & Trust Company, Raceland, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *KEECO, INC.*, Chicago, Illinois; to acquire 11.02 percent of the voting shares of Round Lake Bankcorp, Inc., Round Lake, Illinois.

2. *Kingsley Banc Corp*, Kingsley, Iowa; to become a bank holding company by acquiring 89.2 percent of the voting shares of Kingsley State Bank, Kingsley, Iowa.

3. *Round Lake Bankcorp, Inc.*, Round Lake, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Round Lake, Round Lake, Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Community Financial Corp.*, Dallas, Texas; to acquire 51 percent of the voting shares of Coppell Financial Corporation, Coppell, Texas, thereby indirectly acquiring Coppell Bank, N.A., Coppell, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ameriwest Bancor, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Paradise Valley, Phoenix, Arizona.

2. *Banco de Crédito del Perú*, Lima, Perú, *Bethel Investments, Inc.*, Panama City, Panama, *Crédito del Perú Holding Corporation*, Georgetown, Cayman Islands, British West Indies, and *CDP Holding (Delaware), Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Valencia Bank, Santa Ana, California.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–6067 Filed 3–13–85; 8:45 am]

BILLING CODE 6210–01–M

Provident Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 April 2, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Provident Bancorp, Inc.*, Cincinnati, Ohio; to engage *de novo*, in the activity of making, acquiring or servicing loans, or other extensions of credit for the company's account or for the account of others.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6068 Filed 3-13-85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged In Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR § 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a)) 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 (12 CFR § 225.21(a) 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 office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 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 acquire substantially all of the manufactured housing, mobile home and recreational vehicle retail finance assets of the West Region and the Manufactured Housing Financing Department of General Electric Credit Corporation, Stamford, Connecticut, and engage in: making or acquiring, for its own account or for the account of others, and servicing, loans and other extensions of credit, including making consumer installment, personal loans, and purchasing consumer installment sales finance contracts; acting as agent or broker for the sale of credit life insurance and credit property insurance which is related to the making or acquiring of such loans and extensions of credit. These activities will be conducted by Security Pacific Housing Services, Inc., a subsidiary of Security Pacific Corporation, from offices in the cities of Anaheim and San Jose, California; Reno, Nevada; and Vancouver, Washington; serving the State of California, Idaho, Montana, Nevada, Oregon and Washington. Applicant also proposes to engage in underwriting and reinsuring credit life insurance with respect to extensions of credit made by Security Pacific Corporation and its affiliates. These activities will be conducted by General Fidelity Life Insurance Company, a subsidiary of Security Pacific Corporation, from its offices in San Diego, California, serving the States of Montana and Nevada.

Board of Governors of the Federal Reserve System, March 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6069 Filed 3-13-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Revision of the Poverty Income Guidelines

Correction

In FR Doc. 85-5714 beginning on page 9517 in the issue of Friday, March 8, 1985, make the following corrections:

On page 9518, second column, paragragh following "Poverty Income Guidelines For Hawaii", second line, "$2,250" should read "$2,070".

BILLING CODE 1505-01-M

Food and Drug Administration

[Docket No. 85F-0058]

The B.F. Goodrich Co.; Filing of Food Additive Petition

Correction

In FR Doc. 85-4590 appearing on page 7837 in the issue of Tuesday, February 26, 1985, make the following correction: In the first column, **FOR FURTHER INFORMATION CONTACT,** third line, "NFF-334" should read "HFF-334".

BILLING CODE 1505-01-M

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice to reflect the addition of one agenda item, the deletion of one agenda item, and the rescheduling of the open public hearing. The announcement of the Oncologic Drugs Advisory Committee meeting, which was published in the **Federal Register** of February 15, 1985 (50 FR 6393), is revised to read as follows:

Oncologic Drugs Advisory Committee

Date, time, and place. March 28 and 29, 8:30 a.m., Conference Rm. E,

Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 28, 8:30 a.m. to 4:30 p.m., March 29, 8:30 a.m. to 3:45 p.m.; open public hearing, March 29, 3:34 p.m. to 4:45 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer patients.

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 contact person.

Open committee discussion. The committee will discuss: (1) New drug application for Novantrone (Lederle); (2) new drug application for Epirubicin (Adria); (3) new drug application for Leuprolide (TAP/Abbott); (4) labeling for safe handling of cancer drugs; and (5) lymphoma clinical trials.

Dated: March 7, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-6038 Filed 3-11-85; 11:17 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. April 3, 11 a.m., Conference Rm. 1207, 8757 Georgia Ave., Silver Spring, MD 20910.

Type of meeting and contact person. This meeting will take the form of a conference telephone call. A speaker phone will be provided in the conference room to allow public participation in the open session of the meeting. Open public hearing, 11 a.m. to 12 m.; open committee discussion, 12 m. to 3 p.m.; Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 11, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss information contained in a premarket approval application for a transcutaneous carbon dioxide monitor.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. April 11 and 12, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, April 11, 9 a.m. to 10 a.m.; open committee discussion, April 11, 10 a.m. to 5 p.m.; April 12, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular disorders.

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 discuss Isoptin Tablets (verapamil HC1) for anti-supraventricular arrhythmia (NDA 18-593/S-004) Knoll Pharmaceutical; Isoptin Tablets (verapamil HC1) for hypertension (NDA 18-593/S-006) Knoll Pharmaceutical; Isoptin Sustained Release Tablets for angina (NDA 19-152) Knoll Pharmaceutical; and guidelines for study of anti-anginal agents.

Arthritis Advisory Committee

Date, time, and place. April 29 and 30, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 29, 9:40 a.m. to 10:40 a.m.; open committee discussion, 10:40 a.m. to 5 p.m.; open committee discussion, April 30, 9 a.m. to 4 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritis and related 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 Adverse Drug Reactions (ADR's) to Non-steroidal Anti-inflammatory Drugs (NSAID's) focusing on acute allergic reactions and upper gastrointestinal reactions. Also, the committee will discuss NSAID labeling and change in colchicine labeling.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media

coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 7, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–6037 Filed 3–11–85; 11:17 am]

BILLING CODE 4160–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority; Office of the Regional Commissioner

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Sections SDB.10 and SDB.20 describe the organization and functions of the Office of the Regional Commissioner.

Notice is given that Sections SDB.10 and SDB.20 are revised to eliminate the subordinate components of the Field Assessment Office and their functional statements. This reflects a realignment of the structure of the Field Assessment Office and an adjustment of the functional statement of that component to agree with the other components of the Office of the Regional Commissioner.

The Office of the Regional Commissioner material is revised as follows:

Section SDB.10 The Office of the Regional Commissioner—(Organization)

G. The Field Assessment Office (SDIE–SDXE).

Omit the sentence "The Field Assessment, under leadership of the Director, includes:" and all of the material following.

Section SDB.20 The Office of the Regional Commissioner—(Functions)

G. The Field Assessment Office (SDIE–SDXE).

Omit the last sentence of the functional statement which reads, "It includes the following components and functions:" and all of the material following.

Dated: February 12, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85–6059 Filed 3–13–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–85–1513]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures (Basic Forms and Worksheets)

Office: Housing

Form Number: HUD–50059/A/B/C/D/EZ/F/G and FEF-A/B/C/D/F

Frequency of Submission: Annually
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 2,996,333
Status: Revision
Contact: Judy Lemeshewsky, HUD, (202) 755–6870, Robert Neal, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 28, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Voucher Program
Office: Housing
Form Number: HUD–52517A and 52646
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 24,640
Status: New
Contact: Mrya Newbill, HUD, (202) 755–7707, Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1985.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan Application
Office: Housing
Form Number: HUD–92290
Frequency of Submission: On Occasion
Affected Public: Non-Profit Institutions
Estimated Burden Hours: 200
Status: Extension
Contact: Evelyn Berry, HUD, (202) 755–5866, Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44, U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 21, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems

[FR Doc. 85–6148 Filed 3–13–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Invitation to Public

As required by the operating procedures of the Alaska Land Use Council, which was established under the Alaska National Interest Lands Conservation Act (ANILCA), the Council invites the public to submit, for its consideration, projects and issues they believe should be considered by the Council. In submitting a potential project or issue please include a brief description of the work to be accomplished, the completion date, the anticipated product, and the nature of the Council's involvement. The Co-chairmen, after consultation with the Council's Staff Committees, will prepare a recommended work program considering the requirements of ANILCA, projected Council resources, special requests, and recommendations from the public, the Council's Land Use Advisors committee, and Council members. The proposed work program will be submitted in May to the Council for adoption. Any interest parties having a proposed work program item should submit the information to the Co-chairman prior to April 24, 1985. Submittals should be sent to: Governor Bill Sheffield, State Co-chairman, Vernon R. Wiggins, Federal Co-chairman, Alaska Land Use Council, P.O. Box 100120, Anchorage, Alaska 99510–0120.

Anyone having questions regarding the Council's work program may call the Council office at (907) 272–3422.

Dated: March 11, 1985.

William P. Horn,

Deputy Under Secretary.

[FR Doc. 85–6149 Filed 3–13–85; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[NM 58275]

Zuni Salt Lake Exchange, Catron County, NM

Correction

In FR Doc 85–1849, beginning on page 3417 in the issue of Thursday January 24, 1985, on page 3418 second column, the third line should read: "under the act of August 30, 1890."

BILLING CODE 1505–01–M

Realty Action; Recreation and Public Purposes Classification; Minnesota

AGENCY: Bureau of Managment, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Scott County, ES–28402.

SUMMARY: The following public islands have been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

ES–28402, Scott County: T. 115 N., R. 22 W., Sec. 19, Island Numbers 008 (1.50 acs.) and 009 (.50 acs.); Sec. 30, Island Numbers 011 (3.40 acs.), 012 (.40 acs.) and 013 (1.30 acs.) 5 islands in O'Dowd Lake.

The City of Shakopee Parks and Recreation Department applied for these islands so they can be added to and designated as a part of O'Dowd Lake Park.

The islands are physically suited to the proposed use and are not of national significance. Since the islands are valuable for a local porgram they are considered chiefly valuable for public purposes and therefore suitable for cassification and sale under the Recreation and Public Purposes Act.

This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land will revert to the United States.

The classification of these islands will segregate them from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310, W. Wisconsin Avenue, Milwaukee,

Wisconsin 53201, or by calling Paulette Francis at (414) 291–4415.

Chuck Steele,
District Manager

[FR Doc. 85–6086 Filed 3–13–85; 8:45 am]
BILLING CODE 4310-DN–M

Coeur d'Alene District Office; Sales of Public Lands; Idaho; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive, and Direct Sale Offerings of Public Lands in Bonner, Kootenai, Shoshone, Idaho and Latah Counties, Idaho; correction.

SUMMARY: In FR Doc. 85–3554 beginning on page 6061 in the issue of Wednesday, February 13, 1985, make the following correction: On page 6061, third column in the table, under legal description, the fifth line (Sec. 7) should read (Sec. 6); also in the table under Tract No., the seventh entry (I–6–177) should read (I–6–171).

Dated: March 7, 1985.

Wayne Zinne,
District Manager.

[FR Doc. 85–6083 Filed 3–13–85; 8:45 am]
BILLING CODE 4310-GG–M

[Serial No. I–15466]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes that a 20-acre withdrawal for the California Bar Administrative Site be continued for an additional 20 years. The lands would remain closed to surface entry and mining but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Chief, Branch of Land Operations, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

The Forest Service proposes that the existing land withdrawal made by the Secretarial Order of October 29, 1907, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Managment Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 21 N., R. 20 E.,
Sec. 6, a metes and bounds description within the NW¼.

The area described contains 20 acres in Lemhi County.

The purpose of the withdrawal is to protect a historical ranger station dwelling and other building improvements, which have an estimated replacement value of about $50,000. The withdrawal segregates the land to the extent described in the summary paragraph. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand of the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: March 8, 1985.

Vincent S. Strobel,
Chief, Branch of Land Operations.

[FR Doc. 85–6075 Filed 3–13–85; 8:45 am]
BILLING CODE 4310-GG–M

[Serial No. I–14894]

Idaho; Notice of Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 123.42 acre withdrawal for the Boise Irrigation Project continue for an additional 100 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by June 12, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208–334–1735.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of April 21, 1942, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 2 N., R. 3 E.,
Sec. 10, lot 1, NW¼NE¼;
Sec. 11, lots 5, 9.

The area described contains 123.42 acres in Ada County.

The purpose of the withdrawal is to protect the Boise Irrigation Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Dated: March 7, 1985.

William E. Ireland,
Chief, Realty Operations Section.

[FR Doc. 85–6074 Filed 3–13–85; 8:45 am]
BILLING CODE 4310-GG–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Union Oil Company of California

AGENCY: Minerals Mangement Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2647, Block 160, East Breaks Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Surfside, Texas.

DATE: The subject DOCD was deemed submitted on March 6, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose for this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR..

Dated: March 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–6105 Filed 3–13–85; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas Lease Operations; Alaska, Atlantic, Gulf of Mexico, and Pacific Regions; Amendment to OCS Order No. 12

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This document changes Minerals Management Service's (MMS) form item numbers of information exempt from public release. The new item numbers are necessary due to revisions in MMS forms. There is no change in the information exempt from public release.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860–7916, (FTS) 928–7916.

SUPPLEMENTARY INFORMATION: Forms MMS–152, Monthly Report of Operations; MMS–330, Well-Completion or Recompletion Report and Log; MMS–331, Sundry Notices and Reports on Wells; and MMS–331C, Application for Permit to Drill, Deepen, or Plug Back have been revised and the new versions are in use by Outer Continental Shelf (OCS) lessees. Revision of the forms has not resulted in a change to the information which is subject to public disclosure under OCS Order No. 12. However, some of the item numbers which identify information which is subject to disclosure have changed. This order amends OCS Order No. 12 for all OCS Regions to correct the form item numbers.

Publication of this order as proposed is unnecessary since the change is solely a correction to avoid confusion to the lessee. This is not a substantive amendment since there is no change in information which is protected from public disclosure.

The Department of the Interior has determined that the changes are not major rules under Executive Order 12291. Since the amendment will not affect the information subject to disclosure, there will be no economic effect on industry, nor will it have any significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). For the same reason, this order is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

Paperwork Reduction Act

This amendment does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author

This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

(43 U.S.C. 1334)

Dated: February 12, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out above, OCS Order No. 12 for the Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Regions is amended as set forth below.

Paragraphs 2.2, 2.3, and 2.4 of OCS Order No. 12 are revised to read as follows:

2.2 *Form MMS 330, Well-Completion or Recompletion Report and Log.*

2.2.1 *Prior to Commencement.* Prior to commencement of production, all information contained on this form shall be available except—

a. Item 1a, Type of Well;

b. Item 4, Location of Well, at top production interval and at total depth;

c. Item 20, If Multiple Completion, how many;

d. Item 21, Producing Interval;

e. Item 23, Type Electric and Other Logs Run;

f. Item 25, Casing Record;

g. Item 26, Liner Record;

h. Item 27, Tubing Record;

i. Item 28, Perforation Record;

j. Item 29, Acid, Fracture, Cement Squeeze, etc;

k. Item 30, Production;

l. Item 35, Summary of Porous Zones; and

m. Item 36, Geologic Markers.

2.2.2 *After Commencement of Production.* After commencement of production, all information shall be available except Item 35, Summary of Porous Zones, and Item 36, Geologic Markers, unless previously made available under subparagraph 3.2b and 30 CFR 250.3(b).

2.2.3 *5-Years' Elapsed Time.* If production has not commenced after an elapsed time of 5 years from the date of filing Form MMS 330 as required in 30 CFR 250.38(b), excluding the total time that operations and production are suspended by direction of the Secretary of the Interior or the Secretary's duly authorized representative, and further excluding the total time that operations and production are stopped or

prohibited by court order, all information contained on this form shall be available except Item 35, Summary of Porous Zones, and Item 36, Geologic Markers, unless previously made available under subparagraph 3.2b and 30 CFR 250.3(b). Within 90 days prior to the end of the 5-year period, exclusive of exceptions noted above, the lessee shall file a Form MMS 330 containing all information requested on the form except Item 35, Summary of Porous Zones, and Item 36, Geologic Markers, to be available for public inspection. Objection to the release of such information may be submitted with the completed Form MMS 330.

2.3 *Form MMS 331, Sundry Notices and Reports on Wells.*

2.3.1 *"Request for Approval to:"* When used as a "Request for Approval to:" Conduct operations, all information contained on this form shall be available except Item 4, Location of Well, at top production interval and at total depth, and Item 16, Describe Proposed or Completed Operations.

2.3.2 *"Subsequent Report of:"* When used as "Subsequent Report of:" Operations, and after commencement of production, all information contained on this form shall be available, except information contained in Item 16 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

2.4 *Form MMS 331C, Application for Permit to Drill, Deepen, or Plug Back.* All information contained on this form and the location plat attached thereto shall be available except Item 4, Location of Well at Proposed Production Zone, and Item 20, Proposed Casing and Cementing Program.

[FR Doc. 85-5916 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Draft Environmental Impact Statement and Intent To Hold Public Hearings

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability and public hearing for Environmental Impact Statement/Environmental Impact Report.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County, and California State Lands Commission have jointly prepared a draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for proposed development in the Central Santa Maria Basin, offshore Santa Barbara County, California. The Draft EIS/EIR includes an evaluation of the potential effects of proposed developments by Union Oil Company and Exxon Company, USA, as well as anticipated future development of oil and gas resources in the Central Santa Maria Basin area. Single copies of the Draft EIS/EIR can be obtained from Santa Barbara County, Resource Management Department, Energy Division, 123 East Anapamu Street, Santa Barbara, California 93101. Technical appendices may be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

A. Geology
B. Air Quality
C. Onshore Water Resources
D. Marine Water Resources
E. Marine Biology
F. Terrestrial and Freshwater Biology
G. Cultural Resources
H. Visual Resources
I. Onshore Noise/Vibration
J. Commercial Fishing, Kelp Harvest, and Mariculture
K. Socioeconomics
L. Traffic
M. Systems Safety and Reliability

Copies of the Draft EIS/EIR will also be available for review in the following public libraries:

County of Los Angels, Public Library, Govt. Pub. Unit, 330 W. Temple, Los Angeles, CA 90012
State Library, Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, CA 95814
San Luis Obispo, City/County Library, 1354 Bishop Street, San Luis Obispo, CA 93406
Main Library, Vandenberg Air Force Base, CA 93437
County of Ventura Library, Documents Section, P.O. Box 771, Ventura, CA 93001
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101
University of California Library, Santa Barbara Campus, Main Library, Santa Barbara, CA 93106
U.S. DOI Natural Resource Library, 18th and "C" Streets NW., Washington, D.C. 20240

Joint Federal/State/County public hearings are scheduled from 6 P.M. to 9 P.M. on April 17, 1985, at the City Hall, Council Chambers, 100 Civic Center Plaza, Lompoc, California. The purpose of the hearings is to receive oral and written testimony regarding the Draft EIS/EIR. The hearing will provide the Minerals Management Service (MMS) with additional information to help evaluate the potential effects associated with these aspects of the project subject to their approval.

Written comments on this EIS/EIR will be accepted at the Santa Barbara County address listed above until May 6, 1985. These comments will be addressed by the MMS, Santa Barbara County, and California State Lands Commission in the Final EIS/EIR. Agencies, interested groups, or individuals needing further information should contact Donna Cooksey Brewer at 213-688-4480.

After testimony and comments have been reviewed and analyzed, a Final EIS/EIR will prepared.

Dated: March 15, 1985.

William E. Grant,

Regional Director Pacific OCS Region.

[FR Doc. 85-6076 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Mining Plan of Operations at Wrangell-St. Elias National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, Alaska Mineral Resources Company has filed a plan of operations in support of proposed mining operations on lands embracing CALAMITY MINE #1 and #2 Placer Mining Claims within the Wrangell-St. Elias National Park and Preserve. These plans are available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson

Acting Regional Director, Alaska Region.

[FR Doc. 85-6145 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-10-M

Big Cypress National Preserve; Intent To Prepare a Draft Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare a draft Environmental Impact Statement for the General Management Plan and Minerals Mangement Plan for Big Cypress National Preserve.

SUMMARY: This notice announces the initiation of a General Management

Plan, Minerals Management Plan, and accompanying Draft Environmental Impact Statement for Big Cypress National Preserve in Collier, Monroe, and Dade Counties, Florida. To assist the National Park Service in defining issues and management alternatives, public workshops have been scheduled. Notices concerning these workshops are appearing in local newspapers.

ADDRESS: Comments or inquiries concerning planning and environmental analysis should be addressed to: Superintendent, Big Cypress National Preserve, P.O. Box 1247, Naples, Florida 33939.

Dated: March 8, 1985.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 85-6144 Filed 3-13-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Decision Not To Review Initial Determinations Granting Intervention and Termination of Three Parties; Issuance of Consent Orders

Correction

In FR Doc 85-4791, appearing on page 7969 in the issue of Wednesday, February 27, 1985, the Investigation number in the heading should read as set forth above.

BILLING CODE 1505-01-M

[Investigation No. 337-TA-180]

Certain X-Ray Image Intensifier Tubes; Extension of Deadline for Concluding Investigation

AGENCY: International Trade Commission.

ACTION: Extension of deadline for concluding investigation.

SUMMARY: The Commission has changed the administrative deadline for concluding the above-captioned investigation from March 15, 1985, to April 12, 1985.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

The investigation was instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation of certain X-ray image intensifer tubes into the United States, or in their sale. The proceedings were initiated on the basis of a complaint filed by Varian Associates, Inc., alleging infringement of two U.S. patents owned by Varian. The respondents are the Dutch corporation N.V. Philips Gloeilampenfabrieken and the related U.S. companies North American Philips Corp. and Philips Medical Systems, Inc. (See 49 FR 4046 (Feb. 1, 1984), as amended at 49 FR 6416 (Feb. 21, 1984).)

On January 23, 1985, complainant Varian moved to terminate the investigation, explaining that the parties had entered into a patent licensing agreement and a related letter agreement (Motion No. 180-6"C").

Although all parties wished to have the investigation terminated, there is a dispute regarding confidentiality of the licensing agreement and the application of Commission rule § 210.51(b)(1), which requires that nonconfidential copies of licensing and other agreements accompany the motion for termination. (See 19 CFR 210.51(b)(1), as amended at 49 FR 46123 (Nov. 23, 1985).)

On January 28, 1985, the respondents filed a motion requesting that the Commission (1) withhold from public inspection Varian's purportedly nonconfidential version of the agreement, and (2) grant confidential treatment to the agreement in its entirety, or, in the alternative, grant confidential treatment to the extent indicated in Philips' provisionally nonconfidential copy of the agreement (Motion No. 180-7"C"). Varian and the Commission investigative attorney filed responses opposing that motion.

The Commission decided to certify the motions to a Commission administrative law judge for an initial determination to be issued by March 11, 1985. In addition, the administrative deadline for concluding the investigation was extended from March 15, 1985, to April 12, 1985.

Public Inspection

The motions, the Commission's Action and Order, and all nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

By order of the Commission.

Issued: March 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6034 Filed 3-13-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 458]

Railroad Cost of Capital—1984

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time of file non-railroad statements and railroad rebuttal statements in notice of institution of limited revenue adequacy proceeding.

SUMMARY: In the **Federal Register** of March 5, 1985 (50 FR 8799), the due date for the submission of initial statements by the railroads was extended two weeks to March 15, 1985. That Notice should have also extended, by two weeks, the April 1, 1985 due date for the submission of statements by non-railroad parties and the April 22, 1985 due date for the submission of railroad rebuttal statements. An extension of these other due dates is necessary to allow the parties the same amount of time for comment as that set forth in the original Notice. Accordingly, the due date for the submission of statements by non-railroad parties is extended from April 1, 1985 to April 15, 1985 and the due date for railroad rebuttal statements is extended from April 22, 1985 to May 6, 1985.

DATES: Statements by non-railroad parties are due April 15, 1985 and railroad rebuttal statements are due May 6, 1985.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

Dated: March 7, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-6110 Filed 3-13-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Larry Goolsbey and David Anstett

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 26, 1985, a proposed Stipulation and Consent Decree in *United States* v. *Larry Goolsbey and David Anstett*, Civil Action No. A84–320, was lodged with the United States District Court for the District of Alaska.

The proposed Stipulation and Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and to refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The Decree also requires defendants to perform reclamation work at their Friday Creek mining site. The reclamation work must be completed by June 30, 1985. The defendants must pay stipulated penalties for any failure on their part to either obtain appropriate NPDES permits or to comply with their reclamation obligations.

The defendants also must pay a civil penalty of $5,000 for their past violations of the Clean Water Act. $2,500 is to be paid within thirty days of the entry of the decree, and the remaining $2,500 is to be paid in six equal payments at nine percent interest rate on the diminishing balance with the first payment due within 60 days of the date of entry of this Decree and the remaining payments due by the 15th of each succeeding month.

The Decree will terminate two years after its entry by the Court or at such time when the United States has collected all stipulated civil penalties accruing during the two year period, whichever is later.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Larry Goolsbey and David Anstett*, D.J. NO. 90–5–1–1–2159.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building & U.S. Courthouse, 701 C Street, Room C–252, Mail Box 9, Anchorage, Alaska 99513; and the Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and decree and enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–6079 Filed 3–13–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Open Meeting

March 11, 1985.

The National Commission Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on March 29, 1985, in the State Room of the Mayflower Hotel, Washington, D.C.

The meeting is expected to discuss major policy issues for inclusion in the initial report to Congress. The meeting is open to the public.

Kenneth L. Bader,

Chairman.

[FR Doc. 85–6129 Filed 3–13–85; 8:45 am]

BILLING CODE 3410–05–M

NATIONAL SCIENCE FOUNDATION

Charge-Coupled Device Detectors; Astronomical Instrumentation and Development

ACTION: Notice.

SUMMARY: This notice is to inform you of the opportunity to obtain a limited number of Charge-Coupled Device detectors for use in astronomical research. Developed under National Aeronautics and Space Administration sponsorship by Texas Instruments, Inc., these detectors have been made available to NSF for distribution to the U.S. astronomical community.

The following provides information on the detectors, eligibility requirements, and procedures for proposal submission and evaluation.

Laura P. Bautz,

Director, Division of Astronomical Sciences.

DATE: March 14, 1985.

ADDRESS: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, Telephone: (202) 357–9793.

Proposal Submission Deadline: May 1, 1985.

Announcement

Under sponsorship of the National Aeronautics and Space Administration (NASA), a 3-phase, 800 × 800 pixel Charge-Coupled Device (CCD) detector was developed by Texas Instruments, Inc. for low-light-level imaging. NASA has identified a number of these detectors, in various stages of completion, that would not be suitable for flight use buy may be excellent detectors for use in ground-based astronomy. NASA has transferred these devices to NSF for such use. This announcement details the availability of the detectors, provides a summary of their characteristics, and provides guidelines for preparation of proposals for their acquisition.

Availability and Characteristics

It is the intention of the Division of Astronomical Science to provide the astronomical community with packaged, tested devices. However, at the present time, the CCDs are in various stages of completion. A few are already thinned and packaged, though of unknown quality. Some are thinned but not bonded or packaged. Most are unthinned. The yields during each of the steps necessary to package the CCDs are uncertain, as are the characteristics of the final products. The expected characteristics of most of the CCDs are given in Table 1. Figure 1 is the expected quantum efficiency of front-illuminated, unthinned chips and Figure 2 that for the thinned devices after ultraviolet flooding.

Table 1

Readout noise $7e^-$ at 25.6μs/pixel
Full well $->50ke^-$/pixel
Deferred charge $-<300e^-$
No residual images
800 × 800, 15μ pixels.

Approximately 10 packaged devices will be available within about 9 months of the start of the program. Full distribution is estimated to take 24 months.

All devices will be accompanied by a full set of test data, including optimized voltages and wave forms, a tested CCD driver board to be used inside the CCD dewar, circuit diagrams, a mechanical sample, a dewar design, and a PC data-

acquisition system design. Arrangements will be made for technical consultation in solving start-up problems.

Eligibility and Limitations on Use

Proposals for astronomical use of these detectors will be accepted from U.S. colleges universities, and privately-supported observatories, NSF-supported National Astronomy Observatories, other Federally-funded research and development centers, and Government laboratories. Observatories or corporations located in the U.S. but operated principally for the benefit of non-U.S. astronomers are not eligible. Proposers should also note that statutory export restrictions may limit the transport of such devices outside the United States.

Title to devices distributed as a result of successful proposals will remain with the National Science Foundation. A preliminary progress report on the implementation of the detector will be required 6 months after its receipt. Twenty-four months after receipt of a detector, the proposing institution will be required to submit a final report detailing the use of the detector. On receipt of the final report, the National Science Foundation will make a determination of where title will rest.

Proposal Submission and Evaluation

Proposals should detail the plans for scientific use of the detectors, provide a clear statement of the number of CCDs required, their specifications, and an implementation schedule. *No funds will be awarded as a result of this competition*, so it is essential that sponsoring institutions provide evidence of adequate resources for implementation of the detectors.

Proposals should be prepared following the guidelines in NSF 83–57, "Grants for Scientific and Engineering Research." The cover page should list the date of this announcement in the space reserved for "Program Announcement/Solicitation No." No budget page is required. Proposals will be evaluated using the criteria for the selection of research projects detailed on page 9 of NSF 83–57. Copies of NSF 83–57 may be obtained by contacting the program office listed below.

Proposals must be postmarked by May 1, 1985. A panel peer review will be conducted, and successful candidates will be notified on or about August 15, 1985.

Additional information can be obtained from G. Wayne van Citters, Jr., Program Director for Astronomical Instrumentation and Development, Division of Astronomical Sciences, National Science Foundation, Washington, D.C. 20550 (telephone number 202/357–9793).

Note.—The National Science Foundation has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. This number is 202/357–7492.

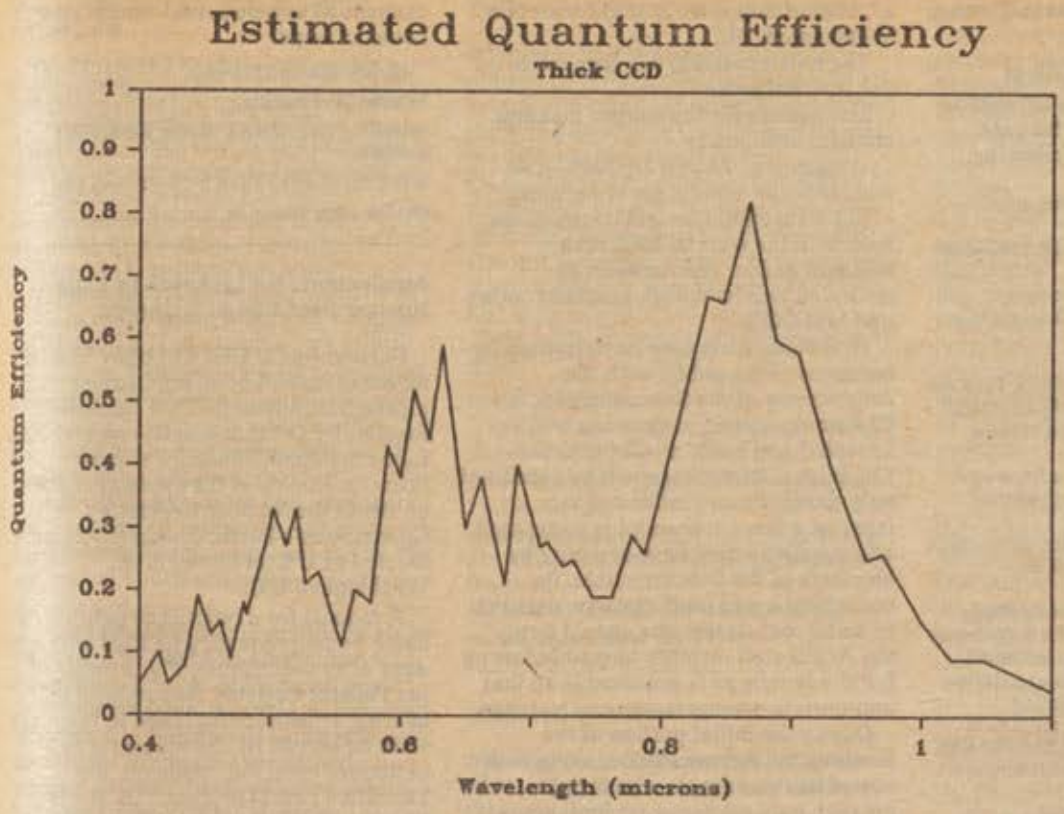
The National Science Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals on behalf of all qualified scientists and engineers, and strongly encourages women and minorities to compete fully in any of the research and research-related Programs described in this document.

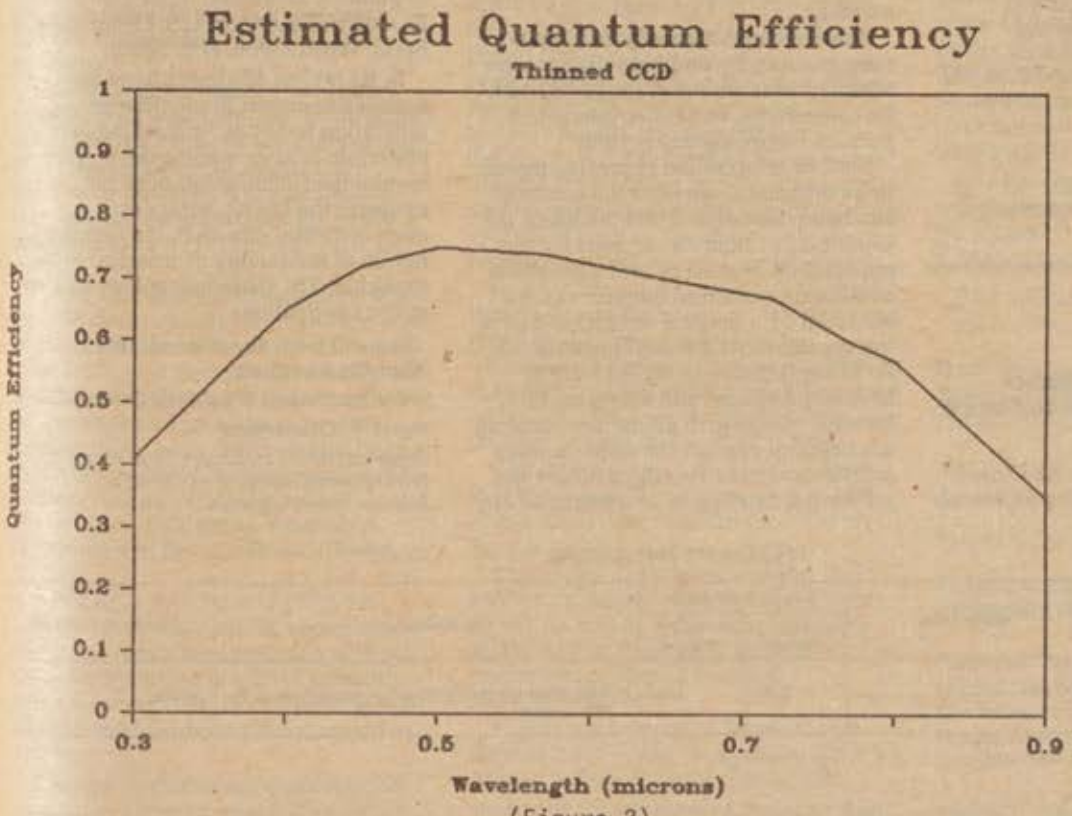
In accordance with Federal statutes and regulations and NSF policies, no person on grounds of race, color, age, sex, national origin, or physical handicap shall be excluded from participation in, denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

Catalog of Federal Domestic Assistance Number 47.050.

BILLING CODE 7555-01-M



(Figure 1)



(Figure 2)

[FR Doc. 85-6065 Filed 3-13-85; 8:45 am]
BILLING CODE 7555-01-C

Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Date and time: March 28 and 29, 1985–8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closes.

Contact person: Dr. James R. Gosz, Program Director, Ecosystem Studies (202) 357–9596, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Panel: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

March 7, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–6035 Filed 3–13–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents; Meeting

The ACRS Subcommittee on Class 9 Accidents will hold a meeting on March 27, 1985, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 27, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue the review of the suite of NRC severe accident codes. The codes to be reviewed will be the containment codes and MELCOR.

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 is 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, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. A. Wang (telephone 202/634–3267) 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: March 11, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–6133 Filed 3–13–85; 8:45 am]

BILLING CODE 7590–01–M

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 7th day of March 1985 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of applicant, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Feb. 22, 1985 to Feb. 25, 1985 XSNMO2197.	U-233	9.200	9.020	Reactor physics experiments and measurements in the ZED–2 reactor.	Canada.

[FR Doc. 85–6134 Filed 3–13–85; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants certain of the information needed by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, WM 404–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 4.17 and is entitled "Standard Format and Content of Site Characterization Plans for High-Level-Waste Geologic Repositories." The guide is being revised to reflect provisions of the Nuclear Waste Policy Act and to make other changes that the NRC staff believes necessary.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by May 15, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 7th day of March 1985.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research.

[FR Doc. 85–6135 Filed 3–13–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Station, Unit 1; Order Extending Construction Completion Dates

Illinois Power Company on behalf of itself, and as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the Permittees) are holders of Construction Permit No. CPPR–137 issued by the Nuclear Regulatory Commission on February 24, 1976, for the Clinton Power Station, Unit 1. This facility is presently under construction at the applicant's site in DeWitt County approximately six miles east of the city of Clinton, Illinois.

By letter dated August 22, 1984, the Illinois Power Company on behalf of the permittees filed a request for an extension of the construction completion date. This request is to extend the latest completion date for the facility from October 1, 1984, to October 1, 1986.

The Illinois Power Company stated that this extention is requested because construction has been delayed due to the following:

1. A series of stop work orders and recovery programs initiated by Illinois Power in 1982 to implement corrective action and improve construction programs for several areas of construction.

2. An Overinspection Program and Record Verification Program initiated by Illinois Power in 1982 to verify the quality of construction of large portions of CPS.

Furthermore, the time required to lift the stop work orders and complete the recovery programs, Overinspection Program, and the Record Verification Program was not accounted for in previous request for an extension of the construction permit for Clinton Power Station.

The staff has performed an evaluation of the request for extension. Based on this review, the staff had determined that the above factors have resulted in significant delays in construction completion and that the request is for a reasonable period of time when considering the nature of the delays, the bases from which are set forth in the staff's evaluation of the request for extension.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.55(b) an extension is authorized by law and will not endanger life or property of the common defense and security and is otherwise in the public interest.

Pursuant to 10 CFR 50.32, the Commission has determined that the issuance of this extension will have no significant impact on the environment (50 FR 7244).

The NRC staff's evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the local public document room established for the Clinton Power Station, at the Warner Vespasian Library, Clinton, Illinois.

It is hereby ordered that the latest completion date for Construction Permit No. CPRR–137 is extended from October 1, 1984 to October 1, 1986.

Date of Issuance: March 8, 1985.

For the Nuclear Regulatory Commission.

Hugh Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–6136 Filed 3–13–85; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of the Information Collection Requirement Contained in 29 CFR Part 2673

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212–0020) without any change in the substance or in the method of collection. The information collection, which is scheduled to expire on May 31, 1985, is contained in PBGC's regulation on Notice of Termination for Multiemployer Plans, 29 CFR Part 2673.This regulation prescribes the contents and procedures for a notice of termination that must be filed when a multiemployer plan has terminated either by plan amendment or by mass withdrawal of all employers. The effect of this notice is to advise the public of PFGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Wasington, D.C. 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulatory Department (611), 2020 K Street, NW., Washington, D.C. 20006; telephone 202–254–4860 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

Issued at Washington, D.C., on this 1st day of March 1985.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–6092 Filed 3–13–85; 8:45 am]

BILLING CODE 7708–01–M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; New System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of a new system of records.

SUMMARY: The Railroad Retirement Board proposes to establish a new system of records subject to the Privacy Act. The system notice for this new system of records is published below.

DATES: This new system of records, with the exception of the proposed routine uses and claimed exemption, will become effective as proposed without further notice in 60 calendar days from the date of this publication unless OMB approves the RRB request for a waiver of the 60-day advanced notice requirement of new or altered system reports, in which case the system, with the exception of the routine uses and the claimed exemptions, will become effective as of the date the waiver is granted. If the waiver is granted, the routine uses will be effective not earlier than 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination. If the waiver is not granted, the routine uses will become effective 60 days from the date of this publication unless comments are received which would result in a contrary determination. Regardless of the OMB action on the waiver, the claimed exemption will not be effective for this system until a final rule is published in the **Federal Register.**

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312–751–4548.

SUPPLEMENTARY INFORMATION: A professional investigator has been hired in the RRB's Bureau of Audit and Investigation to conduct investigations of alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB as well as alleged misconduct or conflict of interest on the part of RRB employees in the discharge of their duties. The development of investigation files requires the establishment of a system of records under the Privacy Act.

On March 8, 1985, the Railroad Retirement Board filed a new system report for this system with the Speaker of the House of Representatives, the President of the Senate and the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circulars No. A–108, Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3, dated May 17, 1976.

By the Authority of the Board.

Dated: March 8, 1985.

Beatrice Ezerski,

Secretary to the Board.

RRB–43

SYSTEM NAME:

Investigation Files.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any of the following categories of individuals on whom a complaint is made alleging a violation of law, regulation, or rule pertinent to the administration of programs by the RRB, or, with respect to RRB employees, alleging misconduct or conflict of interest in the discharge of their official duties: current and former employees of the Railroad Retirement Board; contractors; subcontractors; consultants; applicants for, and current and former recipients of, benefits under the programs administered by the Railroad Retirement Board; officials and agents of railroad employers; members of the public who are alleged to have stolen or unlawfully cashed RRB benefit or payroll checks or assisted in such activity; and others who furnish information, products, or services to the RRB.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents alleging a violation of law, regulation or rule, or alleging misconduct, or conflict of interest; reports of investigations to resolve allegations with related exhibits, statements, affidavits or records obtained during the investigation; recommendations on actions to be taken; transcripts of, and documentation concerning requests and approval for, consensual telephone monitoring; reports from law enforcement bodies; prior criminal or noncriminal records as they relate to the investigation; reports of actions taken by management personnel regarding misconduct; reports of legal actions resulting from violations referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. App., as amended by the Railroad Solvency Act, Publ. L. 98–76; Railroad Unemployment Insurance Act, as amended, Sec. 9 (a), (b) and (c), and Sec. 12(a); Railroad Retirement Act

of 1974, as amended, Sec. 7(b) (3) and (6) and Sec. 13(a.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation initiated by the RRB, or in connection with requests by RRB for legal advice.

b. Records may be disclosed to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee or the issuance of a security clearance, provided that the subject individual is not an individual on whom the RRB has obtained information in conjunction with its administration of the Railroad Retirement Act, the Railroad Unemployment Act, the Milwaukee Railroad Restructuring Act, or the Rock Island Railroad Transition and Employee Assistance Act.

c. Disclosure may be made to a congressional office from the record of an individual in rsponse to an inquiry for the congressional office made at the request of that individual, provided that the subject individual would not be denied access to the requested information.

d. Disclosure may be made to an attorney representing the subject individual upon receipt of a written letter or declaration stating the fact of representation, provided that the subject individual would not be denied access to the requested information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, word processing and/or personal computer diskette.

RETRIEVABILITY:

Name; assigned case number cross-referenced to name of subject of investigation.

SAFEGUARDS:

General access is restricted to the director of Audit and Investigation and members of the director's investigatory staff; disclosure within the agency is on a limited need-to-know basis; records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Retention period and disposal instructions have not yet been officially established.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Audit and Investigation, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information. Many records in this system are exempt from the notification requirements under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination whether an exemption applies shall be made at the time a request for notification is received.

RECORD ACCESS PROCEDURES:

Requests for access to the record of an individual and requests to contest such a record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information. Many records in this system are exempt from the records access and contesting requirements under 5 U.S.C. 552(k). To the extent that records in this system of records are not subject to exemption, they are subject to acccess and contest requirements. A determination as to whether an exemption applies shall be made at the time a request for access or contest is received.

CONTESTING RECORD PROCEDURES:

See notification section above.

RECORD SOURCE CATEGORIES:

The subject individual, the complainant, other third parties, including employers and local, state, and federal agencies, and other RRB record systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) records in this system of records which consist of investigatory material compiled for law enforcement purposes are exempted from the notice, access, and contest requirements under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G),(H) and (I), and (f); however, if any individual is denied any right, privilege, or benefit to which the individual 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 that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

The reasons why the head of the Railroad Retirement Board decided to exempt this system of records under 5 U.S.C. 532a(k) are given in a rule published elsewhere in this **Federal Register.**

[FR Doc. 85-6098 Filed 3-13-85; 8:45 am]
BILLING CODE 7905-1-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23626; 70-7064]

Eastern Utilities Associates; Proposed Increase in Authorized Common Shares and Order Authorizing Solicitation of Proxies

March 8, 1985.

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder.

EUA proposes to increase the authorized number of its common shares of $5 par value from 12,000,000, as now provided in the Declaration of Trust, to 16,000,000. It is stated that the additional shares are needed for the EUA System's three shareholder and employee common share purchase plans and to meet unforeseen events. EUA intends to submit the proposal to its shareholders for their approval at the annual meeting to be held on April 22, 1985. In connection therewith EUA proposes to solicit proxies of its common shareholders to be voted at the meeting.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 2, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a

copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective with respect to the proposed increase in authorized shares.

It appearing to the Commission that EUA's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration with respect to the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6063 Filed 3-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21827; SR-OCC-83-22]

Self-Regulatory Organizations; Filing of Amendments to a Proposed Rule Change of Options Clearing Corp.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), notice is hereby given that on January 7, 1985, the Options Clearing Corporation ("OCC") filed with the Commission an amendment to the above-captioned proposed rule change. Notice of the proposal was published in the **Federal Register** on October 3, 1983 (48 FR 50187). The Commission is publishing this notice to solicit comments on the amendments to the proposal.

The original proposal sets forth rules and standards for clearing members that have facilities management arrangements. Under a typical facilities management agreement, an OCC clearing member (the "managing clearing member") agrees to provide certain services for another OCC clearing member (the "managed clearing member") for a fee. The managed clearing member relies on the managing clearing member's performance of its duties under the facilities management contract to meet OCC's membership requirements of operational capability, experience, and competence. OCC's amendments to its proposed facilities management standards are described below.

OCC has amended paragraph 4 of its Interpretation to OCC Bylaw Article V, Section 1 (the "Interpretation"), to provide that facilities management agreements must be in a form acceptable to OCC. As previously proposed, the Interpretation required facilities management agreements to be approved by OCC. OCC states in its filing that the amendment clarifies that OCC will not approve formally facilities management agreements, but will review them to see that they comply with OCC's proposal.

OCC's amendment also would delete paragraphs 4(c) and 4(d) of the Interpretation. These paragraphs would have required a facilities management agreement to allocate liabilities between the managing and managed clearing members and between those clearing members and OCC. OCC states in its amendment that it now believes the allocation of liabilities between the managing and managed clearing members should be a matter of contract negotiation between the members. Regarding clearing members' liability to OCC, OCC states that its protections against financial exposure (*e.g.*, OCC margin and clearing fund requirements) adequately protect it from financial exposure from clearing members.

OCC's amendment does not affect the original proposed Interpretation's requirement that a facilities management agreement provide for termination of the agreement if OCC no longer approves the managing clearing member to act as a managing clearing member and that a managing clearing member continue to satisfy OCC that it has requisite net capital, operational capability, and experienced staff. OCC's proposed amendment to the Interpretation, however, clarifies that OCC can conduct reviews of managing clearing members periodically and when a managing clearing member expands its facilities management activities. The above provision has been renumbered as paragraph 4(c), formerly 4(f), of the Interpretation. OCC's amendments also changed the last sentence of paragraph 4(c) to require all facilities management agreements to meet OCC's requirements and to be in a form acceptable to OCC within 120 days after the effective date of OCC's proposal.

OCC's amendment has amended OCC Rule 309 to enable OCC to limit a clearing member's facilities management activities when necessary to protect OCC, its members, or the public. OCC believes that this amendment should reduce risks posed by clearing members' facilities management activity. The amendment also moves paragraph 4(e) of the Interpretation to OCC Rule 309. That provision states that if a facilities management agreement is terminated, the managed clearing member must withdraw from OCC membership. Withdrawal need not occur if OCC's membership committee determines that the managed clearing member has the operational capacity, experience and competence to perform the managed services or that the managed clearing member has entered into a new and acceptable facilities management agreement. OCC believes that this provision should be a condition for continued OCC membership rather than a provision of a facilities management agreement. In addition, OCC has deleted the last sentence of old paragraph 4(e) of the Interpretation, which required a managed clearing member to consent to its summary suspension as an OCC member if it failed to withdraw from OCC membership.

Finally, OCC states in its filing that it does not intend the net capital and other requirements of its proposal to apply to arrangements where a clearing member performs purely ministerial functions for another clearing member when such arrangements do not raise issues of increased risk or liability.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at OCC's principal offices.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, comments are invited within 21 days from the date of publication in the **Federal Register**. Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by April 4, 1985. Your comments should refer to File No. SR-OCC-82-22.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

March 8, 1985.

[FR Doc. 85-6064 Filed 3-13-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21833; File No. SR-PHLX 85-3]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Bid/Ask Differentials

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 February 19, 1985, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to amend subparagraph (c)(i)(A) of Rule 1014. The text of the proposed rule change follows with brackets indicating deletions and italic indicating additions.

Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the last preceding transaction price was $.50 or less, no more than ½ of $1 where the last preceding transaction price was more than $.50 but did not exceed $10, no more than ¾ of $1 where the last preceding transaction price was more than $10 but less than $20, and no more than $1 where the last preceding transaction price was $20 or more, provided that the Exchange may establish differences other than the above for one or more series or classes of options. The bid-ask differentials as stated above shall apply to [all but the longest term series of options open for trading in each class] *series of less than nine months*. For *all other* series, the bid-ask differential shall be twice that stated above.

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 Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to conform the language in subparagraph (c)(i)(A) of Rule 1014 to Rule 1012 which permits the trading of foreign currency options series with a twelve month expiration period. The proposed rule change clarifies language in subparagraph (c)(i)(A) of Rule 1014 by specifying the bid-ask differentials for options with expiration periods of nine months or longer.

The statutory basis for the proposed rule change is found in Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") which provides, in pertinent part, that the rules of the Exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor 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 approved such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., 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. 20549. 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 April 4, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 11, 1985.

[FR Doc. 85-6148, Filed 3-13-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/830]

Secretary of State's Advisory Committee on Private International Law, Study Group on the Law Applicable to International Sales; Meeting

There will be a meeting of the Study Group on the Law Applicable to International Sales, a study group of the subject Advisory Committee, at 9:30 A.M. on Friday, March 29, 1985 in Room 1205 of the Department of State in Washington, D.C. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the chairman.

The Study Group will review the work of the expert Special Commission of the Hague Conference on Private International Law that has prepared a draft convention on the law applicable to contracts for the international sale of goods. The draft convention sets out rules to govern the law applicable to international sales contracts when the parties have specified applicable law in their contract and when they have not. The Study Group will review draft written comments prepared for the Department of State by Professor Arthur T. von Mehren of Harvard Law School, who has attended the several meetings of the Special Commission on behalf of the United States. The written

comments, in final form, will be submitted to the Permanent Bureau of the Hague Conference in early April and will subsequently be disseminated with the comments of other governments on the draft convention. The draft convention will be reviewed at the extraordinary session of the Hague Conference in October, 1985, which is expected to adopt the convention in final form. The United States expects to participate at the extraordinary session with a delegation.

Entry to the Department of State building at 22nd and C Streets, NW. is controlled and members of the general public planning to attend should, prior to March 28, 1985, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, (telephone (202) 632–8134) of their name, affiliation, address, and and phone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, and Vice Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 85–6109 Filed 3–13–85; 8:45 am]

BILLING CODE 4710–08–M

SUSQUEHANNA RIVER BASIN COMMISSION

Buffalo Creek Watershed Plan and Similar U.S. Soil Conservation Service Land Treatment Project; Proposed Comprehensive Plan Addition; Hearing

The Susquehanna River Basin Commission (SRBC) will hold a public hearing to receive comments from citizens, government agencies and others on the proposed addition of the Buffalo Creek Watershed Plan and similar U.S. Soil Conservation Service (SCS) land treatment projects to its *Comprehensive Plan for the Management and Development of the Water Resources of the Susquehanna River Basin.* The hearing has been scheduled for Thursday, April 11, 1985, at the Commission headquarters building, 1721 North Front Street, Harrisburg, Pennsylvania, following the regular meeting of the Commission which begins at 9:00 A.M.

The Susquehanna River Basin Compact, Pub. L. 91–575, 84 Stat. 1509 et seq., requires the Commission to maintain a Comprehensive Plan for the immediate and long-range use, management and development of the water and related resources of the basin. Initially adopted in December 1973, the Plan provides a basinwide strategy to guide the Commission and others in the management, use and conservation of the basin's resources. The Plan is also used to evaluate proposed water resource developments that the Commission must, by law, approve. Federal agencies must exercise their powers in a manner that does not substantially conflict with the Comprehensive Plan.

Buffalo Creek is a tributary of the West Branch of the Susquehanna River and covers a watershed area of 85,760 acres in Union County, Pa. The Buffalo Creek Watershed Plan is a SCS land treatment project, sponsored by the Union Conservation District, which includes measures to reduce erosion and sediment on agricultural land, soil nutrient losses, sediment and nutrient loading of streams and agricultural pollutants from livestock wastes. Total project cost is estimated to be $1,287,800 of which $721,900 is to be borne by Pub. L. 566 funds and $565,900 by project sponsors and landowners.

The Buffalo Creek Watershed Plan represents one component of SCS's overall authorized mission under Pub. L. 566 to reduce erosion, soil nutrient losses and agricultural pollution. Pursuant to this mission, SCS anticipates a series of land treatment projects similar in purpose and scope throughout the Susquehanna Basin. The Clover Creek Watershed Plan is another such project which the Commission adopted into its Comprehensive Plan on May 12, 1983. At its regular meeting on February 7, 1985, the Commission agreed to consider the Buffalo Creek Project for adoption into the SRBC Comprehensive Plan. The Commission also agreed to consider the incorporation of a statement in the Comprehensive Plan which would allow SCS land treatment projects similar in purpose to the Clover Creek and Buffalo Creek Watershed Plans to be incorporated into the Comprehensive Plan on a generic basis. Adoption into the Comprehensive Plan will affirm the projects' compliance with the Compact and the goals and objectives of the Comprehensive Plan, thus clearing the way for implementation by the Federal Government and local sponsors.

The April 11th hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views and comments on the proposed addition. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given opportunity to be heard whether or not they have given such notice. After the hearing, the Commission will evaluate all relevant material and decide whether to adopt the proposed addition into the Comprehensive Plan.

A background report on the Buffalo Creek Watershed Plan is available upon request from the Secretary, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102–2391, 717/238–0423. Additional information may also be obtained through the Soil Conservation Service, P.O. Box 985, Federal Square Station, 228 Walnut Street, Harrisburg, Pa. 17103, 717/782–4453.

Dated: March 8, 1985.

Robert J. Bielo,

Executive Director.

[FR Doc. 85–6104 Filed 3–13–85; 8:45 am]

BILLING CODE 7040–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Cheryl C. Thomas, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2522, FTS 858–2522.

Type of Request: Regular submission of a new collection

Title of Information Collection: Rebate Processing Form/Sales Data Form

Frequency of Use: On occasion

Type of Affected Public: Individuals; small businesses

Small Businesses or Organizations Affected: Yes

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 4,035

Estimated Total Annual Burden Hours: 295.9

Need For and Uses of Information: Increasing use of high-efficiency air-conditioners (HEAC) in the Tennessee Valley must be encouraged to mitigate

the costliness of high load growth on TVA's power system. TVA is encouraging consumer purchase of HEAC's through a rebate offering. These forms allow TVA to provide, monitor, and evaluate the rebate program.

Dated: March 6, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85-6080 Filed 3-13-85; 8:45 am]

BILLING CODE 8120-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

[Summary Notice No. PE-85-4]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: April 3, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION:

The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on March 8, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24478	Global Int'l Airways Corp	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane in noncompliance with the operating noise limits until hush kits are installed.
24481	Fast Air Carrier LTDA	14 CFR 91.303	To allow petitioner to operate a Stage 1 Boeing 707 airplane to Stewart International Airport in New York until hush kits are installed.
24450	Baron Aviation	14 CFR 135.179	To allow you to operate single-engine Cessna 206A aircraft utilizing the provisions of a minimum equipment list.
24497	Kaiser Steel Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24498	Guilford Mills, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24499	The Kelly Springfield Tire Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24500	Contel Service Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24501	GTE Service Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24502	AMCA International	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24503	Digital Switch Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24504	State Street Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24506	Cities Service Oil & Gas Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24508	Ashland Oil, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24509	Mercury Flight, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24516	U.S. Epperson Underwriting Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24521	Florida Federal Savings & Loan Assoc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24523	United States Fidelity and Guaranty Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24524	Corning Glass Works	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24514	Peabody Coal Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24513	Forbes, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24512	American Can Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24511	Ziegler Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
25410	Outboard Marine Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24450	Frakes Aviation	14 CFR 21.19(b)(1)	To allow petitioner to remove the two Wright 1820 piston engines and install four turbojet engines on the Grumman Albatross aircraft without obtaining a new type certificate.
23521	Singapore Airlines	14 CFR 21.181	To amend Exemption No. 3768, as amended, by adding two B-747-312 airplanes and by extending the 5/31/85 termination date. That exemption allows petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24445	Cammacorp	14 CFR 145.71	To allow a foreign repair station under contract to petitioner; to modify DC-8 aircraft to comply with Part 36 noise limitations.
24446	Air Transport Assoc. of America	14 CFR 121.485	To allow member carriers to conduct flag operations on the understanding that § 121.485 only applies to an operation which requires three or more pilots and an additional flight crewmember.
24452	Guardsman Chemicals	14 CFR 21.181	To allow petitioner to operate a Beech King Air 200 aircraft utilizing the provisions of a minimum equipment list.
22872	Air Transport Assoc. of America	14 CFR Portions of Part 61, Appendix A & Part 121, Appendix E.	To allow member carriers to permit the actual static airplance preflight inspection training and checking requirements for a pilot candidate for a rating in a two-member flightcrew airplane to be accomplished by using an advanced and approved pictorial means.
24459	Embraer, S.A	14 CFR 135.157(b)(2)	To allow petitioner to comply with the oxygen supply requirements of § 121.333(e)(1) and (2) instead of § 135.157(b)(2).
24458	American Airlines	14 CFR Portions of Part 121, Appendix H	To allow petitioner to conduct B-747 and DC-10 Phase IIA training in a Phase I simulator until June 1, 1986.
24457	Flight Training Devices	14 CFR 63.37	To provide relief from the 5 hours of flight training requirement for a turbojet flight engineer certificate applicant who holds a commercial pilot certificate with an instrument rating, subject to certain conditions.
24409	Pellerin Milnor Corp	14 CFR 21.181	To allow petitioner and Pellerin Laundry Machinery Sales Company to operate a Beech Model 200 aircraft utilizing the provisions of a minimum equipment list.
24377	Pittsburg & Shawmut Coal Company	14 CFR 21.181	To allow petitioner to operate a Citation II aircraft utilizing the provisions of a minimum equipment list.
23139	Wylie Aircraft Corp	14 CFR 91.31(e)(3)	To allow petitioner to operate two DC-6B cargo aircraft with a 5 percent increase in zero fuel and landing weights.
24526	Jeno's, Inc	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24437	Reaction Research Society, Inc	14 CFR 101.23(b)	To permit petitioner to operate unmanned rockets in controlled airspace in the vicinity of Randsburg, California.

Disposition of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
24365	Lineas Aereas Paraguayas	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Amended grant 2/26/85.*
24252	Dept. of Air Force	14 CFR 101.13(a)(2)	To allow the 1st Special Operations Wing to conduct training with the Fulton Recovery System. *Grant 2/20/85.*
24345	Varig, S.A.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Amended grant 2/19/85.*
23979	Sterling Airways A/S	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended partial grant 2/15/85.*
23883	Florida Express, Inc.	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 6 BAC 1-11: N455OT *Granted 2/12/85.*
24289	Buffalo Airways, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended grant 2/12/85.*
24370	Hawaiian Airlines, Inc.	14 CFR 91.303	To allow petitioner to operate two Stage 1 DC-8 aircraft in noncompliance with the operating noise limits between Vancouver and Honolulu, Salt Lake City, Las Vegas and San Francisco until hush kits are installed. *Denied 1/31/85.*
24398	American Trans Air	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Granted 2/7/85.*
24034	Aerovias Colombianas, LTDA	14 CFR 91. 303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Partial grant 2/7/85.*
24350	Varig, S.A.	14 CFR 91. 303	To allow petitioner to operate Stage 1 Boeing 707 aircraft to New York, Los Angeles and Anchorage until June 30, 1985, in noncompliance with the operating noise limits. *Denied 2/8/85.*
24326	Hawaiian Airlines, Inc.	14 CFR 91. 303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Partial grant 2/8/85.*
24373	Transportes Aereos Mercantilos Panamericanos S. A.	14 CFR 91. 303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Grant 2/8/85.*

[FR Doc. 85-6033 Filed 3-13-85; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance; Indiana Transportation Museum, et al,

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate

scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before May 1, 1985 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Indiana Transportation Museum

[Waiver Petition Docket Number RSGM–84–28]

The Indiana Transportation Museum (ITMZ) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three F–7 type diesel electric locomotives. The ITMZ states that installation of the windshield glazing is proceeding without problem, but feels the alterations necessary to install safety glazing in the side windows would radically affect the historical appearance of the locomotives, and accordingly, requests authority not to install the required glazing in these side windows. The ITMZ claims that these locomotives are operated only in the summer months for excursion service and in areas where incidents of vandalism are low; therefore, there is little or no safety risk for operating personnel.

Kewash Railroad Incorporated

[Waiver Petition Docket Number RSGM–84–29]

The Kewash Railroad Incorporated (KEWH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The KEWH operates on approximately 15 miles of track between Washington and Keota, Iowa, in areas which are principally rural. The KEWH feels that the possibility of an act of vandalism against them is remote, because they operate in a lightly populated area, generally away from highways and secondary roads.

Vandalia Railroad Company

[Waiver Petition Docket Number RSGM–84–31]

The Vandalia Railroad Company (VRRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The VRRC claims that they operate in a rural area over 2.54 miles of track in Vandalia, Illinois, and feels that the cost of complying with the Safety Glazing requirements would be an unnecessary financial burden.

Blue Rock Transportation Company

[Waiver Petition Docket Number RSGM–84–32]

The Blue Rock Transportation Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The Blue Rock Transportation Company indicates that they operate trains five to ten times per week on 4.2 miles of track in a rural area near Greenfield, Ohio. The Blue Rock Transportation Company contends their use of the locomotive and the area in which it is operated, make compliance with FRA safety glazing requirements unnecessary.

Great Southwest Railroad, Inc.

[Waiver Petition Docket Number RSGM–84–34]

The Great Southwest Railroad, Inc. (GSW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two switching locomotives. The GSW operates on 26 miles of track, primarily in switching service, through nonresidential areas near Grand Prairie, Texas. The GSW indicates that they have never had problems with vandalism on their property and feels that safety would not be adversely affected by the granting of a waiver.

Indiana Harbor Belt Railroad Company

[Waiver Petition Docket Number RSGM–84–35]

The Indiana Harbor Belt Railroad Company (IHB) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 20 cabooses.

The IHB seeks a temporary waiver of compliance to allow additional time to obtain and apply FRA safety glazing and also in consideration for the financial impact to the railroad. The IHB seeks a one-year extension and indicates all will be done to bring their active fleet into compliance.

Appanoose County Community Railroad

[Waiver Petition Docket Number RSGM–84–36]

The Appanoose County Community Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The Appanoose County Community Railroad operates on 11 miles of track in rural areas between Centerville and Moulton, Iowa, and because of the areas in which it works, feels that compliance with FRA glazing requirements is unnecessary.

J&J Railroad, Inc.

[Waiver Petition Docket Number RSGM–84–37]

The J&J Railroad, Inc. (JJRD) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for their one locomotive. The JJRD operates over 9 miles of track near Hardin, Kentucky, with inconsistent frequency. The JJRD feels that the installation of FRA certified glazing is unnecessary because of the area in which they operate.

The Alaska Railroad

[Waiver Petition Docket Number RSGM–84–38]

The Alaska Railroad (ARR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for nine locomotives. The ARR indicates the locomotives are scheduled to be retired from service and are only used in limited service for four to five months of the year. ARR seeks a waiver of compliance because of the short remaining operational life of the locomotives and the limited use to which they are put.

E.I. DuPont De Nemours and Company, Inc.

[Waiver Petition Docket Number RSGM–85–1]

The DuPont Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and one caboose.

DuPont states that the locomotives are used to switch cars within their plant and to deliver shipments of coal to Atlantic City Electric over 3 miles of track owned by Conrail.

DuPont contends that while this track extends outside of their plant fence, it is on property owned by DuPont and is not

a part of the general railroad system. DuPont also states that there will be no railroad employees riding on their equipment, that access to the track is limited, and that there has been no history of vandalism along the track.

Allied Corporation

[Waiver Petition Docket Number RSGM-85-2]

The Allied Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for nine locomotives. Allied Corporation operates five of these locomotives at their facility in Solvay, New York, and two locomotives at each of their facilities in Hopewell, Virginia, and Jamesville, New York. The Allied Corporation states that their locomotives are primarily used to switch rail cars within manufacturing facilities, but do have cause to enter upon local railroad tracks for the purpose of picking up and delivering cars. The corporation indicates the cost to install certified glazing would be significant to the operation of these locomotives.

Minnesota Valley Transportation Company, Inc.—Southwest

[Waiver Petition Docket Number RSGM-85-3]

The Minnesota Valley Transportation Company, Inc.—Southwest (MNVA) seeks a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The MNVA states that they operate on 95 miles of track, all but eight of which are in a rural environment in the vicinity of Morton, Minnesota. The MNVA feels that the retrofitting of equipment to comply with FRA safety glazing standards, to protect against situations they do not encounter, would impose an undue financial burden on them.

Issued in Washington, D.C., on March 7, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-6042 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. EX85-1; Notice 1]

British Coach Works Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

British Coach Works, Ltd., of Arnold, PA, a division of Perfect Plastics Industries, has petitioned for temporary exemption from several Federal motor vehicle safety standards. The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with National Highway Traffic Safety Administration regulations on this subject (49 CFR 555.7) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Petitioner has for some time produced kits used by vintage automobile enthusiasts to transform existing automobiles into physical replicas of classic automobiles. The company has decided to produce a finished replica of the 1952 MG TD to be known as the "BCW 52 T-Series Replicar". A 52T will be built by removing the body of a new Chevrolet Chevette and replacing it "with a new frame and the body of the MG TD. The engine, drive train, braking system, suspension system, steering column, and so forth" will therefore have been manufactured in accordance with Federal motor vehicle safety standards. However, the company has petitioned for temporary exemption from several of the standards on grounds that compliance would cause it substantial economic hardship, either because it lacks the funds for testing, or because compliance would involve changing the design of the vehicle so as to make it no longer marketable as an authentic replica of the MG TD.

British Coach Works seeks exemptions of three years from the following standards, for the reasons indicated.

1. Standard No. 107 *Reflection Surfaces.* Petitioner states that the interior of its vehicle is an authentic replica of the MG TD, using materials similar or identical to those used in the original, and that the limited production level and use of the car "would tend to minimize any potential risk raised by non-compliance".

2. Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment.* Petitioner believes that "side marker lamps (and reflectors) * * * would radically alter the exterior of the automobile in terms of its authenticity"; however, the parking lamps and taillamps are visible from the side of the vehicle. Petitioner believes that the car will not be operated to any great extent at night, and that any risk created by the noncompliance is insignificant.

3. Standard No. 201 *Occupant Protection in Interior Impact.* Petitioner requests exemption from the head impact test requirements of paragraph S3.1 (instrument panels), and the energy absorption tests of S3.4 (sun visors) and S3.5 (arm rests). It avers that the head impact test "may not be met" because the interior replicates that of the original MG TD, and full compliance would "radically alter the authenticity of the interior". Limited resources mitigate against testing.

4. Standard No. 202 *Head Restraints.* The original TD did not have them. Limited production and usage of the replica "would tend to minimize any potential risks caused by non-compliance".

5. Standard No. 206 *Door Lock and Door Retention Components.* The door latches provided have "a fully latched and secondary latch position in compliance with the requirements of the standard", but they do not lock. The latches and hinges "are authentic replicas" and longitudinal, transverse and inertia load requirements may not be met. To change them "would radically affect the authenticity of the automobile".

6. Standard No. 208 *Occupant Crash Protection.* The replica will be fitted with "standard lap seat belts, utilizing the seat belt assemblies and installations provided on the Chevrolet Chevette", but not the shoulder harness portion since the replica is a convertible. Due to the different configuration of the replica interior from that of the Chevette "the 52T may not meet all of the performance requirements * * *," such as S5, S8, S10, and S11.

7. Standard No. 214 *Side Door Strength.* The doors are fiberglass replicas of those of MG TD and "may not be able to meet" all the performance requirements of the standard. Significant alterations would affect the authenticity of the replica design. Due to the company's limited resources, testing of the door strength is not economically feasible.

If the exemption is granted, petitioner's present plans are to build 30 automobiles with an additional 20 to 30 units should market conditions warrant. Petitioner and its parent "are small businesses with only 30 employees and very limited production capacity, research and development facilities, testing equipment and other sophisticated instrumentation * * *." Petitioner's parent Perfect Plastics had a total of $205,000 in retained earnings as of the end of 1983, running a cumulative net loss of $3,000 for the two calendar years ending December 31, 1983.

Petitioner argues that the exemption would be in the public interest because it is located in a depressed part of the country and if a market develops for its product it will be able to hire up to 10 more workers. It purchases supplies

from 37 different suppliers "almost all of them local", a positive effect. An exemption would be consistent with traffic safety objectives because the vehicles are likely to be used only occasionally; purchasers of its replicar kits "have reported annual mileage ranging from a few hundred miles up to a maximum of 2,000 miles, with the automobiles used primarily for special occasions and ceremonial or promotional purposes".

Interested persons are invited to submit comments on the petition of British Coach Works, Ltd. described above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Administration, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that all five copies be submitted.

All comments received before the close of business on the comments considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent possible. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 15, 1985.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 [15 U.S.C. 1410]; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-6139 Filed 3-13-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 8, 1985.

The Department of 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 No.: New
Form No.: IRS Letter 1998(SC)
Type of Review: New
Title: Information Letter to Tax year 1984 Magnetic Media Waiver Recipients

OMB No.: 1545-0224
Form No.: IRS Form 6248
Type of Review: Revision
Title: Credit or Refund of Windfall Profit Tax to Certain Trust Beneficiaries for Windfall Profit Tax Paid by a Trust

OMB No.: 1545-0055
Form No.: IRS Form 1001
Type of Review: Revision
Title: Withholding on Items of Income Covered by an Income Tax Convention

OMB No.: 1545-0232
Form No.: IRS Form 6497
Type of Review: Revision
Title: Information Return of Nontaxable Energy Grants or Subsidized Energy Financing

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, N.W., 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.

Financial Management Service

OMB No.: 1510-0024
Form No.: TFS 1503
Type of Review: Extension
Title: Return Notice of Claim Against the U.S. for the Proceeds of a Government Check

Clearance Officer: Doug Lewis, (202) 287-4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, NW., Washington, D.C. 20228.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph P. Maty,

Departmental Reports Management Office.

[FR Doc. 85-6044 Filed 3-13-85; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 85-42]

Recordation of Trade Name; Gerber Products Company

AGENCY: Customs Service, Treasury.

ACTION: Notice of Recordation.

SUMMARY: On December 17, 1984, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "GERBER PRODUCTS COMPANY" was published in the **Federal Register** (49 FR 49014). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in opposition to the recordation and received not later than February 15, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "GERBER PRODUCTS COMPANY" is recorded as the trade name used by Gerber Products Company, a corporation organized under laws of the State of Michigan, located at 445 State Street, Fremont, Michigan 49412. The trade name is used in connection with plush toys, crib toys and other merchandise intended for use by infants and small children, manufactured in Hong Kong, Taiwan, Malaysia, West Germany, Japan and Thailand.

DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

DATED: March 8, 1985.

Edward T. Rosse,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-6094 Filed 3-13-85; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name, Supreme Import Export Co., Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of Application for Recordation of Trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "SUPREME IMPORT EXPORT CO., INC." used by Supreme Import Export Co., Inc., a corporation organized under the laws of the State of New York, located at 900 Broadway, New York, New York 10003.

The application states that the trade name is used in connection with the following merchandise manufactured in Hong Kong, Korea, Japan, Taiwan and

the Philippines: playing cards; cigarette lighters; cellophane tape; toothbrushes; padlocks; cassette tapes; pens; batteries; sunglasses; cameras and curling irons.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before May 13, 1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:
Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

Dated: March 8, 1985.

Edward T. Roose,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-6095 Filed 3-13-85; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 50
Thursday, March 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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 8434.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 AM (Eastern Time) Tuesday, March 12, 1985.

CHANGE IN MEETING: Cancellation of Meeting.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: March 8, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued March 8, 1985.

[FR Doc. 85-6157 Filed 3-12-85; 10:33 am]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:35 p.m. on Friday, March 8, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the puchase of certain assets of and the assumption of the liability to pay deposits made in Citizens State Bank, Arapahoe, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, March 8, 1985; (2) accept the bid for the transaction submitted by Farmers and Merchants Bank, Edison, Nebraska, an insured State nonmember bank; (3) approve the application of Farmers and Merchants Bank, Edison, Nebraska, for consent to purchase certain assets of and to assume the liability to pay deposits made in Citizens State Bank, Arapahoe, Nebraska, and to establish the sole office of Citizens State Bank as a branch of Farmers and Merchants Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

At that same meeting, the Board also considered a recommendation with respect to an administrative enforcement action against a certain individual in connection with an insured bank (name of individual and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6182 Filed 3-12-85; 1:41 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Saturday, March 9, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Commercial State Bank, Afton, Iowa, which was closed by the Superintendent of Banking for the State of Iowa on Friday, March 8, 1985; (2) accept the bid for the transaction submitted by Citizens Savings Bank, Afton, Iowa, a newly-chartered State nonmember bank subsidiary of CSB Bancorporation, Inc.; (3) approve the applications of Citizens Savings Bank, Afton, Iowa, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in Commercial State Bank, Afton, Iowa, and for consent to establish the sole branch of Commercial State Bank as a branch of Citizens Savings Bank; (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and (5) grant a request for an exemption pursuant to section 348.4(b)(2) of the Corporation's rules and regulations governing management official interlocks to permit certain individuals to serve as management officials of Citizens Savings Bank while also serving as management officials of The First National Bank in Creston, Creston, Iowa.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 11, 1985.
Federal Deposit Insurance Corporation.
Hoyle D. Robinson,
Executive Secretary.
[FR Doc. 85-6183 Filed 3-12-85; 1:41 pm]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 11, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a summary audit report regarding the Corporation's Liquidation Asset Management Information System development project.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 11, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-6184 Filed 3-12-85; 1:41 pm]
BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 18, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administration enforcement proceedings, (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 11, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-6185 Filed 3-12-85; 1:41 pm]
BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 18, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

First Fidelity Thrift and Loan Association, an operating noninsured industrial bank located at 18021 Cowan, Irvin, California.

Application for consent to merge and establish one branch:

Sumter Bank and Trust Company, Americus, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Farmers & Merhants Bank, Leslie, Georgia, and to establish the sole office of Farmers & Merchants Bank as a branch of the resultant bank.

Application for consent to convert into a non-FDIC-insured institution:

Dixie National Bank of Dade County, Coral Gables, Florida.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Community Bank Hartford, South Dakota

Memorandum and resolution re: Final amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control" and "Rules of Practice and Procedures," respectively, which: (1) Delegate to the Corporation's Board of Review the authority (a) to issue civil money penalties for failing to comply with such a directive in violation of the International Lending Supervision Act of 1983, and (b) to enter into certain written agreements; (2) delegate to the Corporation's Executive Secretary the authority to issue an order terminating, by consent, the Federal deposit insurance of a bank that has ceased to accept deposits other than trust funds; (3) redesignate the legal officer with certain authority to take specified action in certain enforcement proceedings; and (4) make certain technical changes.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Quarterly Report for Actions Approved under Delegated Authority as of December 31, 1984.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: The Corning Bank, Corning, Arkansas, AP-396 (Memo dated February 7, 1985)
Summary Audit Report re: The Tucker County Bank, Parsons, West Virginia, AP-372 (Memo dated February 5, 1985)
Summary Audit Report re: Chicago Regional Office, Liquidation Cost Center 3200, (Memo dated February 20, 1985)
Summary Audit Report re: Audit of Selected Liquidation Assets, Costa Mesa Subregional Office (Memo dated February 6, 1985)
Memorandum re: Status of Auditee Corrective Actions

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6186 File 3-12-85; 1:41 pm]

BILLING CODE 6714-01-M

7

FEDERAL ELECTION COMMISSION

[Federal Register No. 85-5587]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 14, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN CONTINUED FROM THE MEETING OF MARCH 7, 1985: 1985 legislative recommendations.

* * * * *

DATE AND TIME: Tuesday, March 19, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (fifth floor)

STATUS: This Meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, March 21, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This Meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft advisory opinion #1984-62—Daniel H. Lowenstein, on behalf of Berman and D'Agostino Campaigns, Inc.
Clearinghouse, memorandum to the Commission
Reclassification: Special asst. to the Deputy General Counsel, routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-6211 Filed 3-12-85; 3:42 p.m.]

BILLING CODE 6715-01-M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-12A]

Government in the Sunshine: Emergency Amendment of Notice

In its notice for the meeting of Friday, March 8, 1985, the Commission indicated that its discussion of agenda item No. 1—Investigation 731-TA-239 [Preliminary] (Rock Salt from Canada)—briefing and vote, would be held in open session. However, by recorded vote, a majority of the entire membership of the Commission voted to close a portion of the discussion under this agenda item to the public. Commissioners Stern, Liebeler, Eckes, Lodwick and Rohr voted, pursuant to 19 CFR 201.37(b) that Commission business required the change in the determination of the Commission to open or close this portion of the meeting and that no earlier announcement of the change was possible.

Pursuant to the specific exemptions of 5 U.S.C. 552(c)(4) and in conformity with 19 CFR 201.36(b)(4), Commissioners Stern, Liebeler, Eckes, Lodwick and Rohr voted to hold a portion of the discussion with respect to Item No. 1 in closed session.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since the information discussed in such portion would be likely to disclose confidential business information.

The Commissioners, their assistants, the recording secretaries attended the closed session. Certain staff members responsible for the agenda item were also present.

The Assistant General Counsel to the Commission certified that it is her opinion that the Commission's action in closing this portion of its discussion was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with 19 CFR 201.36(d). The discussion held in the closed session is within the specific exemption of 5 U.S.C. 552b(c)(4) and 19 CFR 201.36(b)(4).

By order of the Commission.

Issued: March 8, 1985.

Gracia M. Berg,

Assistant General Counsel.

Kenneth P. Mason,

Secretary.

[FR Doc. 85-5917 Filed 3-12-85; 9:26 am]

BILLING CODE 7020-02-M

9

LEGAL SERVICES CORPORATION COMMITTEE ON APPROPRIATIONS AND AUDIT

Addition of Item to the March 7, 1985 Agenda.

TIME AND DATE: The meeting will commence at 3:30 p.m. on Thursday, March 7, 1985 and continue until all official business is completed.

PLACE: Ramada Renaissance Hotel, 1143 New Hampshire Avenue NW., La Martine Room, Washington, D.C. 20037.

STATUS OF MEETING: Open.

SUBJECT: 4. Reconsideration of Budget Mark for FY 1986.

SUPPLEMENTARY INFORMATION: Board Member Paul B. Eaglin requested that the Committee reconsider the Budget Mark for FY 1986. Because of the need to act expediently on this matter due to Appropriations Committee meetings being held in the House of Representatives during the week of March 10, 1985, a majority of the Members of the Board voted on March 7, 1985 to add this item to the March 7, 1985 agenda and that no earlier announcement of this addition was possible. The Board Members voted as follows:

For: Chairman William Clark Durant III, Paul B. Eaglin, Hortencia Benavidez, Thomas F. Smegal, Basile J. Uddo, Michael B. Wallace
Against: Robert A. Valois.
Abstaining: LeaAnne Bernstein, Pepe J. Mendez
Not Participating: Lorain Miller, Claude G. Swafford

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Dated issued: March 8, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-6158 Filed 3-12-85; 10:33 am]

BILLING CODE 6820-35-M

10

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-6]

TIME AND DATE: 9 a.m., Thursday, March 21, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Head-On Collision of Burlington Northern Freight Trains Nos. 163 and 100, Wiggins, Colorado, April 13, 1984, and Rear-End Collision of Burlington Northern Freight Trains Nos. 7843 and 7883, Newcastle, Wyoming, April 22, 1984.

2. *Aircraft Accident Report:* United Airlines Flight 665, Boeing 727-222, N7647U, Denver, Colorado, May 31, 1984.

3. *Recommendation* to the Federal Aviation Administration regarding wind shear training and cockpit management.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

Dated: March 11, 1985.

Ray Smith,

Federal Register Liaison Officer.

[FR Doc. 85-6151 Filed 3-12-85; 9:37 am]

BILLING CODE 7533-01-M

11

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 March 18, 1985.

An open meeting will be held on Monday, March 18, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

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).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, March 18, 1985, at 2:30 p.m., will be:

Consideration of whether to propose for public comment amendments to Rule 15c3-3 under Section 15(c)(3) of the Securities Exchange Act of 1934. The proposed amendments will, for purposes of the debit items of the Reserve Formula: (1) exclude the debit balances of household members and other persons related to broker-dealer principals or affiliated in a certain way with a broker-dealer; (2) exclude, under certain circumstances, the debit balances of accounts in which "principals" of a broker-dealer have ownership interests; and (3) exclude the amount by which a broker-dealer's margin account receivable with a single customer exceeds twenty-five percent of tentative net capital of the broker-dealer. The net effect of the proposed amendments may be to require that greater deposits be made in the Reserve Bank Accounts of some broker dealers. For further information, please contact Steven Gray at (202) 272-2807.

The subject matter of the closed meeting scheduled for Monday, March 18, 1985, following the 2:30 p.m. open meeting, will be:

Formal orders of investigation.
Subpoena enforcement action.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinion.

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: David Wescoe at (202) 272-2092.

Dated: March 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-6147 Filed 3-11-85; 4:14 pm]

BILLING CODE 8010-01-M

12

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors.

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are invited to attend and observe the meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDERED:

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Approval of Board Minutes and Consideration of Closed Portions of Board Minutes
III. Report of Board Committees
IV. Coal-Water Solicitation
V. Solicitation Options
  1. Coal Project—Fixed Bed Gasification, Slagging
  2. Other Options
VI. Financial Interests of Directors—Review of Federal Agency Waiver Standards
VII. Scrubgrass Petition for Reconsideration as a Qualified Project—Fourth General Solicitation
VIII. Milestones for Fourth General Solicitation
IX. Letter of Intent Review
  1. Hop Kern
  2. Forest Hill
  3. Northern Peat
  4. Kentucky Tar Sands
X. Programmatic Review of Enpex Project
XI. Resolution to Close Meeting

Closed Session

XII. Letter of Intent Review—Confidential and Proprietary Material
XIII. Status Reports
  1. Cathedral Bluffs
  2. Great Plains
  3. Seep Ridge

TIME AND DATE: 9:45 a.m., March 19, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. March Coleman, Assistant General Counsel—Corporate & Litigation, at (202) 822-6571.

United States Synthetic Fuels Corporation.

Len Rawicz,

Vice President, General Counsel & Secretary.

March 12, 1985.

[FR Doc. 85-6188 Filed 3-12-85; 1:41 pm]

BILLING CODE 6450-01-M

federal register

Thursday
March 14, 1985

Part II

Office of Science and Technology Policy

Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Final document.

SUMMARY: The Office of Science and Technology Policy has prepared this document to be used as a framework for regulatory agencies in assessing cancer risks from chemicals. The document does not attempt to formulate policy or develop standardized methods of risk assessment. It tries to define principles, based upon current scientific information, to serve as guidelines in certain matters when considering carcinogens. The present document is the culmination of drafts extensively reviewed by governmental and non-governmental scientists.

Jerry D. Jennings,

Executive Director.

March 8, 1985.

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MEMBERS OF THE INTERAGENCY STAFF GROUP

The Interagency Staff Group on Chemical Carcinogenesis consisted of:

Dr. Ronald W. Hart, Chairman, National Center for Toxicological Research, Food and Drug Administration
Dr. Richard Adamson, Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health
Dr. Donald Barnes, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. Margaret Chu, Carcinogen Assessment Group, Office of Research and Development, Environmental Protection Agency
Mr. Colin Church, Health Sciences, Consumer Product Safety Commission
Dr. W. Gary Flamm, Office of Toxicological Sciences, Center for Food Safety and Applied Nutrition, Food and Drug Administration
Dr. Allen Heim, Office of the Commissioner, Food and Drug Administration
Dr. Richard Hill, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. David Hoel, Biometry and Risk Assessment Branch, National Institute of Environmental Health Sciences, National Institutes of Health
Dr. Michael Hogan, Biometry and Risk Assessment Branch, National Institute of Environmental Health Sciences, National Institutes of Health
Dr. Zdenka Horakova, Food Safety and Inspection Service, Department of Agriculture
Mr. John Martonik, Health Standards Program, Occupational Safety and Health Administration, Department of Labor
Dr. John A. Moore, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. Peter Preuss, Health Sciences, Consumer Product Safety Commission
Dr. Robert Scheuplein, Office of Toxicological Sciences, Center for Food Safety and Applied Nutrition, Food and Drug Administration
Dr. Raymond Tennant, National Toxicology Program, National Institute of Environmental Health Sciences, National Institutes of Health
Dr. Angelo Turturro, National Center for Toxicological Research, Food and Drug Administration
Dr. Elizabeth Weisburger, Division of Cancer Cause and Prevention, National Cancer Institute, National Institutes of Health
Dr. Paul White, Health Sciences, Consumer Product Safety Commission
Dr. Alvin Young, Office of Science and Technology Policy, Executive Office of the President, The White House.

A number of people were members of the Group at different times in its deliberations for various tenures. They included:

Dr. Andrew Jovanovich, Environmental, Office of Pesticides and Toxic Substances, Environmental Protection Agency
Dr. Carl Leventhal, Office of Science and Technology Policy, Executive Office of the President, The White House
Dr. Denis Prager, Office of Science and Technology Policy, Executive Office of the President, The White House
Dr. John Todhunter, Office of Pesticides and Toxic Substances, Environmental Protection Agency.

Document Preparation

Understanding that "Science is built up with facts as a house with stones. But a collection of facts is no more a science than a heap of stones is a house", the building process in the case of this document was truly a united effort, with stones being set into place by *all* hands. A number of people, in addition to the committee, were extremely helpful in this effort. They include:

Dr. Joseph F. Fraumeni, Environmental Epidemiology Branch, National Cancer Institute, National Institutes of Health
Dr. Robert Hoover, National Institutes of Health, National Cancer Institute, National Institutes of Health
Dr. Robert Langenbach, Cellular and Genetic Toxicology Branch, National Institute of Environmental Health Sciences, National Institutes of Health, and National Toxicology Program
Dr. Michael Shelby, Cellular and Genetic Toxicology Branch, National Institute of Environmental Health Sciences, National Institutes of Health, and National Toxicology Program
Dr. Errol Zeiger, Callular and Genetic Toxicology Branch, National Institute of Environmental Health Sciences, National Institutes of Health, and National Toxicology Program

Finally, the whole document was edited (in alphabetical order) by Drs R.W. Hart, A. Turturro and E. Weisburger.

INTRODUCTION

I. BACKGROUND

Over the years, agencies and programs have been established to deal with hazardous substances, with recent focus on deleterious long-term effects, such as cancer, of these substances. A detailed analysis of the legislative acts enacted by the Congress concerning toxic substances (Table 1) reveals an evolution of thought in that each reflects the scientific views that existed at the time of enactment. Consequently, these acts are not uniform in their view of disease, the role chemical substances might play in its incidence, and what ought to be done about potential toxic substances and potential carcinogens.

TABLE 1—FEDERAL LAWS RELATED TO EXPOSURES TO TOXIC SUBSTANCES

Legislation	Agency	Area of Concern
Food, Drug and Cosmetics Act (1906, 1938, amended 1958, 1960, 1962, 1968, 1976).	FDA	Food, drugs, cosmetics, food additives, color additives, new drugs, animal and feed additives, and medical devices
Federal Insecticide, Fungicide and Rodenticide Act (1948, amended 1972, 1975, 1978).	EPA	Pesticides
Dangerous Cargo Act (1952)	DOT, USCG	Water shipment of toxic materials
Atomic Energy Act (1954)	NRC	Radioactive substances
Federal Hazardous Substances Act (1960, amended 1981)	CPSC	Toxic household products
Federal Meat Inspection Act (1967)	USDA	Food, feed, color additives and pesticide residues
Poultry Products Inspection Act (1968)		

TABLE 1—FEDERAL LAWS RELATED TO EXPOSURES TO TOXIC SUBSTANCES—Continued

Legislation	Agency	Area of Concern
Egg Products Inspection Act (1970)		
Occupational Safety and Health Act (1970)	OSHA, NIOSH	Workplace toxic chemicals
Poison Prevention Packaging Act (1970, amended 1981)	CPSC	Packaging of hazardous household products
Clean Air Act (1970, amended 1974, 1977)	EPA	Air pollutants
Hazardous Materials Transportation Act (1972)	DOT	Transport of hazardous materials
Clean Water Act (formerly Federal Water Control Act) (1972, amended 1977, 1978)	EPA	Water pollutants
Marine Protection, Research and Sanctuaries Act (1972)	EPA	Ocean dumping
Consumer Product Safety Act (1972, amended 1981)	CPSC	Hazardous consumer products
Lead-based Paint Poison Prevention Act (1973, amended 1976)	CPSC, HEW (HHS), HUD.	Use of lead paint in federally assisted housing
Safe Drinking Water Act (1974, amended 1977)	EPA	Drinking water contaminants
Resource Conservation and Recovery Act (1976)	EPA	Solid waste, including hazardous wastes
Toxic Substances Control Act (1976)	EPA	Hazardous chemicals not covered by other laws, includes pre-market review
Federal Mine Safety and Health Act (1977)	DOL, NIOSH	Toxic substances in coal and other mines
Comprehensive Environmental Response, Compensation, and Liability Act (1981)	EPA	Hazardous substances, pollutants and contaminants

Most abbreviations are same as below Additional ones are:

DOL - Department of Labor;
DOT - Department of Transportation;
HEW (HHS)- Department of Health, Education and Welfare (many functions assumed by HHS- Department of Health and Human Services);
HUD - Department of Housing and Urban Development;
NIOSH - National Institute of Occupational Safety and Health;
NRC - Nuclear Regulatory Commission;
USCG - United States Coast Guard

II. THE PURPOSE OF THIS REPORT

The purpose of this document is to: 1) articulate a view of chemical carcinogenesis that scientists generally hold in common today (Part II); and 2) draw upon this understanding to compose, as was done here by senior scientists from a number of Federal agencies, a series of general principles that can be used to establish guidelines for assessing carcinogenic risk (Part I). Because of present gaps in understanding, the principles contain judgmental (science policy) decisions on unresolved issues as well as statements of what is generally accepted as fact. There has been, however, an attempt to clearly distinguish between the different types of information presented (and also provide to all interested parties specific reference to the analysis upon which they are based).

The principles can serve as the basis for consistent regulatory cancer guidelines that the federal agencies can tailor to meet the requirements of the legislative acts they are charged to implement. Similar documents, with varying degrees of specificity, have been produced in the past, *e.g.*, in the late 1970s and early 1980s several agencies of the federal government produced statements directed toward providing a consistent basis for a general federal cancer policy. This document should be seen, in the broad view, as part of an ongoing process, on behalf of the federal government, that strives to periodically update and review current understanding of this aspect of carcinogenesis and the scientific process of how this understanding is utilized.

This document is the result of the combined efforts of senior scientists from the following Federal health-related units, operating in the Interagency Staff Group, under the direction of the Office of Science and Technology Policy (OSTP):

Center for Food Safety and Applied Nutrition (CFSAN) (formerly Bureau of Foods), Food and Drug Administration (FDA)
Consumer Product Safety Commission (CPSC)
Environmental Protection Agency (EPA)
Office of the Commissioner (OC), FDA
Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA)
National Cancer Institute (NCI), National Institutes of Health (NIH)
National Center for Toxicological Research (NCTR), FDA
National Institute of Environmental Health Sciences (NIEHS), NIH
National Toxicology Program (NTP)
Occupational Safety and Health Administration (OSHA)

III. The Context of This Report

This document is written in light of a decision-making process used by many of the regulatory agencies, which involves the assessment of carcinogenic risks posed by chemical substances. The scientific inputs to these evaluations can be best appreciated by examining the decision-making process in some detail.

Risk can be conceived of as being composed of two aspects, each of which can be addressed by science: hazard* and exposure. Although other definitions have been used historically, this document conforms to present usage and "hazard" generally refers to the toxicity of the substance (for some toxic endpoint) and is deduced from a wide array of data including: epidemiological evaluation of long-term animal studies, short-term tests, information on mechanisms, and the results of structure/activity relationships. "Exposure" generally refers to the amount of the substance that people come in contact with. The "risk," in a quantitative risk assessment, is estimated by coupling the results of the exposure and hazard assessments. As either the hazard or exposure approaches zero, the risk also approaches zero.

As a first step in assessing the cancer risk associated with the use of a particular chemical substance, the qualitative evidence that a given chemical substance is likely to be a human carcinogen must be evaluated. In this step, as in the whole process, a number of assumptions and approximations must be made in order to deal with inherent limitations found in the existing data bases. Then, estimates of human exposure, and distribution of exposures likely to be encountered in the population are made. Next, one or more methods for estimating the dose-response relationship at doses below those generally used experimentally must also be evaluated. Finally, the exposure assessment is combined with the dose-response relationship to generate an estimate of risk. The various ways in which these steps are conducted and combined and their attendant uncertainties treated, constitute what is generally referred to as "cancer risk assessment," although an assessment can be terminated at different stages to estimate risk for different purposes.

Some legislation calls for action in the presence of any risk. Other forms of legislation use the concept of unreasonable risk, defined, in some acts, as a condition in which the risks outweigh the benefits; *e.g.*, the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and

*The European community uses the term "risk" where we have used the term "hazard" and vice versa.

Rodenticide Act (FIFRA). A spectrum of approved responses, from simply informing the public of a risk through restricted use to a complete ban, may be available to bring the risks and benefits into appropriate balance.

This document does not perform a risk assessment nor does it suggest that one method of cancer risk assessment is better than another; but, rather, it attempts to review the science of chemical carcinogenesis and develops from this review a set of general principles. It is not a comprehensive treatise; nor a document written for the lay public but is rather a semi-technical review which tries to evaluate the impact of scientific findings of the last decade on general assumptions or principles important to risk assessment. This is based upon the belief of the group that elucidation of the basic mechanisms underlying cancer and the identification of cancer-causing agents and conditions, when coupled to research aimed at identifying and evaluating the problems created by such agents, should provide the optimal administrative bases for making sound and reasonable judgments. These overlapping approaches to evaluating the problems of cancer, we believe, should form one of the strongest foundations upon which a technologically-based society could base its decisions.

IV. The Content of This Report

This document is composed of two parts. Part I presents a set of general principles that may be used by regulatory agencies as they review their own specific guidelines for performing cancer risk assessments. Part II addresses the current state-of-the-science concerning carcinogenesis and cancer risk assessment and forms the underlying scientific basis of Part I.

The general principles in Part I, as has been suggested for similar guidelines in the National Academy of Sciences (NAS) report on Risk Assessment in the Federal Government**, can be useful despite an inherent tendency towards oversimplification and the mixing of scientific knowledge with risk assessment science policy. Many components of the risk assessment process lack definitive scientific bases. Often a choice must be made among several different scientifically plausible options. The above cited NAS report identified approximately 50 components where the uncertainty in the science requires, in part, scientific judgments and science policy decisions to go from one component to the next to reach a decision. This document attempts to leave the majority of these necessary scientific inferences to the scientific regulatory agencies. However, some are so important and fundamental to all cancer risk assessment procedures, regardless of the source of hazard or the different statutory provisions of the agencies, that they are included in some of the principles. Where this has occurred, we have attempted to indicate, both in Part II and the wording of the principle itself, that a public health science policy decision is embodied in it. For example, Principle 8 defers to the statement that it is reasonable to treat an animal carcinogen as if it were a human carcinogen. Many scientists would agree that, while there is a significant amount of evidence to support qualitative animal to human extrapolation for carcinogenesis, the evidence falls short of establishing this proposition as a scientific fact (when determining the response of different species to chemicals, many chemicals appear to be carcinogenic in one species or strain and not in another, even when only rodents are being compared). Nonetheless, this principle has been accepted by all health and regulatory agencies and is regarded widely by scientists in industry and academia as a justifiable and necessary inference. It is not possible to draw a sharp distinction in every instance between principles which are based solely on science and those which embody a choice based also on science policy. However, several of the principles, *e.g.* Principles 8, 11 and 26, clearly reflect certain aspects of science policy.

Part II of this document is divided into six separate chapters, each discussing the current information in an area of science used in the cancer risk assessment process.

Chapter 1 highlights some of the recent advances in our understanding of the mechanisms of carcinogenesis. A general consensus has evolved which describes cancer as a multi-stage process involving a variety of events which can include metabolic conversion, initiation, promotion, and proliferation. The chapter highlights some advances in our understanding that have implications in the way we assess cancer risk. At the same time, the chapter also identifies some of the vast amount of information that remains to be collected and analyzed.

Chapter 2 examines short-term testing and the relationship between genetic toxicity and carcinogenicity. Tests for gene mutation, chromosomal aberration, DNA damage and repair, and cellular (morphologic) transformation have provided valuable information on the potential for chemical substances to cause cancer. This field is currently characterized by a great deal of activity, and the data generated must be carefully analyzed and verified before use in cancer risk assessment.

The third chapter contains an evaluation of long-term animal tests, which have been a major factor in past assessments of cancer risk. A review of the usefulness in cancer risk assessment of the data developed via this approach to chemical evaluation is made, and potential limitations and pitfalls of such data relative to extrapolation to human populations are discussed.

The fourth chapter examines the current state of epidemiological knowledge relating to human cancer. Data collected during the past 50 years permit the analysis of trends in cancer incidence/mortality and provide information related to the various etiologies of cancer. Recent developments in cancer epidemiology are highlighted and their potential impact on risk assessment pointed out. Much of the discussion concentrates on the methods to be used in such studies in attempting to overcome past, often cited, limitations of this approach.

In addition to these chapters which examine factors associated with hazard assessment, Part II also contains a discussion of exposure assessment. As Chapter 5 points out, the field of exposure assessment has been marked by significant progress in the areas of monitoring data, computer modeling, transformation and transport of chemicals, and laboratory approaches to determining the behavior of chemicals in the environment. At the same time uncertainties remain, and any risk assessment will necessarily be affected by these limitations.

Chapter 6 concludes Part II of the document. It discusses hazard or dose-response assessment and gives a comprehensive framework for integrating this with hazard and exposure elements as inputs into the qualitative and quantitative risk assessment processes. This chapter depends heavily on all the other chapters of this volume and attempts to make clear the various approaches that are used in risk assessments, noting both the limitations and advantages of each. Common themes within each chapter are the uncertainty, the gaps in data, and the questions of interpretation associated with some aspects of the scientific information used in the risk

**"Managing the Process: Risk Assessment in the Federal Government National Academy of Sciences, Washington D.C., 1983

assessment process. A critical evaluation of this information comprises Part II of the document and led to the principles listed in Part I. These general principles were developed to provide interim guidance in areas of uncertainty until such time that additional scientific experimentation provides the required information needed to improve estimations of risk in human populations. As a note of caution, it should be recognized that the chapters of Part II, taken *in toto*, provide the underlying support for the principles articulated in Part I. To read Part I without a full appreciation of the material in Part II is to invite oversimplification and misinterpretation.

Finally, a note is needed, chiefly addressed to specialists on the various topics that are briefly discussed in Part II. If reports of a broad nature are to be written at all, and general reports are often necessary to present organized thought on subjects of vital interest, it is inevitable that those who write them must spend less time on a topic than someone who concentrates almost exclusively on one specific interest. Therefore, there are certain to be areas which some authorities think are not discussed enough, others which some feel go on *ad infinitum*. Also, since the chapters in Part II of this document are an attempt to provide a balanced account of what is generally accepted, derived from a vast amount of information involving the work of thousands of individuals, citing relatively few, some must be slighted.

Both problems are inevitable in a work of this type. Hopefully, deficiencies in the choice of topic for emphasis or failures to acknowledge contributions have not been egregious.

PART I--PRINCIPLES

PREFACE

The principles contained within this segment were derived from the information detailed in Part II by the members of the Interagency Staff Group. This section attempts to provide, in a non-technical form, some important general statements relevant to the evaluation of the role of chemicals in carcinogenesis. These statements are intended to serve as a bridge connecting the basic science as expounded in Part II and the multifaceted process of risk assessment.

Since there are gaps in the information available, differences in evaluations and in scientific opinion may exist about certain of the points highlighted as principles. However, these principles derive from a *weltanschauung* utilizing a balanced approach with an appreciation of all elements of the problem, from hazard identification and estimation through exposure and risk assessment. It is clearly understood that new information and newly emerging concepts may modify some of these statements. Indeed, an unstated "zeroth" principle is that regulatory judgments should embody an openness to advances in science and emerging scientific understanding. As a consequence, it is necessary that the process which led to this document be a continuing one, with periodic updates as new advances in science dictate. For the time being, however, as a result of an arduous cooperative effort these statements, we believe, represent an up-to-date summary on a number of important topics.

I. Principles Derived From The Mechanisms of Carcinogenesis

1. Carcinogenesis is a multistage phenomenon that may involve the genome both directly and indirectly. These stages of carcinogenesis may be, to varying degrees, influenced by a number of variables such as age at exposure, diet, hormonal status, intra- and interspecies variability, which should be considered when trying to predict human response to potentially carcinogenic agents (Chapter 1, Section VI).

2. Appropriate *in vitro* and *in vivo* tests can indicate that an agent has a certain action such as genetic toxicity or promotion. Such information is valuable and may be useful in evaluating mechanism(s) of cancer induction. However, in the evaluation of human risk, the attribution of observed findings of carcinogenicity to a particular biological effect must rest upon sound evidence that the effect is responsible for the cancer induction. It must be kept in mind that a chemical may contribute to carcinogenesis in multiple ways (Chapter 1, Section VI).

3. At the present stage of knowledge, mechanistic considerations such as DNA repair and other biological responses, in general, do not prove the existence of, the lack of existence of, or the location of a threshold for carcinogenesis. The presence or absence of a threshold for one step of the carcinogenic process does not necessarily determine the presence or absence of a threshold for the whole process (Chapter 1, Section V, Part A).

4. The carcinogenic effects of agents may be influenced by non-physiological responses (such as extensive organ damage, radical disruption of hormonal function, saturation of metabolic pathways, formation of stones in the urinary tract, saturation of DNA repair with a functional loss of the system) induced in the model systems. Testing regimes inducing these responses should be evaluated for their relevance to the human response to an agent (Chapter 1, Section V, Part B) and evidence from such a study, whether positive or negative, must be carefully reviewed.

II. Principles for Tests of Cancer Induction

A. Short-Term Tests

5. Short-term tests, such as assays for point mutations, chromosomal aberrations, DNA damage, and *in vitro* transformation are useful in: 1) screening for potential carcinogens; 2) reaching a judgment on the carcinogenicity of a chemical; and 3) providing information on carcinogenic mechanisms (Chapter 2, Section IV, Part B).

6. Short-term tests are presently limited in their ability to predict the presence or absence of carcinogenicity and cannot supplant data from long-term animal studies or epidemiological investigations since the tests do not necessarily screen for all potential means of cancer induction and do not necessarily mimic all reactions that would occur *in vivo*. Additional research is required to improve existing tests and develop ones that identify chemicals which act by genetic mechanisms not yet determined or which act by other, non-genetic mechanisms (Chapter 2, Section IV, Part C).

7. Short-term tests should be carefully selected to ensure they have been adequately validated. Several tests with different endpoints may be required to characterize a chemical's response.

B. Long-term Tests

8. In the evaluation of long-term test results, the term carcinogen should be used in a broad sense, i.e. a substance which is capable under appropriate test conditions (Principles 10-13) of increasing the incidence of neoplasms (combining benign and malignant when scientifically defensible) or decreasing the time it takes for them to develop. Careful consideration to the relevant issues cited in Principles 4, 9 and 14 should be given prior to a determination that a chemical is an animal carcinogen (Chapter 3, Sec. I, Part A and Sec. II, Part B).

Deference should be given to the IARC principle: "*that in the absence of*

adequate data in humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficent evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans."

However, this presumption is evaluated along with other relevant information (Principle 25) in making a final judgment concerning human carcinogenicity (Chapter 6, Sec. II, Part B) and should not foreclose further inquiry into the human relevance of animal carcinogens.

9. Some experimental animal models ordinarily have high incidences of certain tumors. The evaluation of tumor data from such animals can pose special problems. For example, the interpretation of cancer incidence in some strains of rats with testicular or mammary tumors, or in some strains of mice with lung or liver tumors, must be approached carefully in the light of other biological evidence bearing on potential carcinogenicity (Chapter 3, Section II, Part C).

10. Protocols for long-term tests should be designed to achieve an appropriate balance between the two essential characteristics of a biological assay: adequate biological and statistical sensitivity (a low false negative rate) and adequate biological and statisitical specificity (a low false positive rate) (Chapter 3, Part II, Section D, Number 2). The absence of biases in selection and allocation of animals between control and treatment groups as regards diet, husbandry, necropsy, pathology, and from insufficent quality control, is crucial (Chapter 3, Part I, Section B, Number 2).

11. It is appropriate to use test doses that generally exceed human exposure levels in order to overcome the inherent insensitivity of the traditional design of the long-term animal test. The highest dose should be selected after an adequate prechronic study and after evaluating other relevant information, as necessary, to determine the highest dose consistent with predicted minimal target organ toxicity and normal lifespan, except as a consequence of the possible induction of cancer (Chapter 3, Section I, Part B, Number 4 and Section II, Part B, Number 1).

12. The diagnosis of pathologic lesions is complicated and requires judgment and appropriate experience. Diagnoses can differ depending on the tissues and species involved and can change with time as techniques improve and data on bioassays accumulate. Accurate interpretation of tumor data is contingent upon careful attention to gross observation, tissue sampling, slide preparation and histologic examination. Diagnosis of tumors should be guided by evidence of their histogenic origin and stage of progression (Chapter 3, Section II, Part C).

13. Appropriate statistical analysis should be performed on data from long-term studies to help determine whether the effects are treatment related or possibly due to chance. These should include a statistical test for trend and a test based on pairwise comparisons, including appropriate correction for differences in survival. The weight to be given to the level of statistical significance (the p-value) and to other available pieces of information is a matter of overall scientific judgment (Chapter 3, Section II, Part D).

14. Decisions on carcinogenicity of chemicals in animals should be based on consideration of relevant biological and biochemical data (Chapter 3, Section II, Part B, Number 3) and include the following (Chapter 3, Part II):

(a) Use of background or recent historical control incidence of tissue specific tumors can be an aid, in addition to concurrent controls, in the evaluation of tumor data. Care should be exercised when combining different control groups.

(b) Evidence of probable reproducibility is important. This evidence can consist of independent confirmation of the original findings or may be derived from intergroup comparisons of tumor incidence data, between dose groups, sexes, strains or species.

(c) Evidence of dose-response increases confidence that the effect is treatment-related; similarly lack of an observed dose-response may reduce the likelihood that the effect is associated with the treatment.

(d) Confidence is increased when: 1) the incidence of tumors is markedly elevated in the treated groups compared to controls; 2) tumor incidence is significantly increased at multiple anatomical sites; and 3) tumor latency is significantly reduced.

(e) In addition to tumor incidence at specific sites, the stage in the development of neoplasia should be evaluated. For example, the finding that the majority of neoplastic lesions at a specific site is more advanced in a treated group compared to its control may provide additional evidence of a treatment-related effect. Conversely, the finding that the control group lesions are more advanced might argue that a marginal elevation of tumor incidence is not treatment-related.

(f) The incidence of preneoplastic lesions in treatment or control groups may, in certain instances, provide evidence for the biological plausibility of a neoplastic response and contribute to the interpretation of a bioassay.

(g) Identification of effects from prechronic studies on the target organ(s) can aid in the evaluation of long-term studies.

(h) Information on the the activity of chemicals at the physiological, cellular and molecular level may be important to the evaluation of carcinogenicity data on a case-by-case basis.

III. Principles for Epidemiology

15. The major strength of the epidemiological method is that it is the only means of assessing directly the carcinogenic risk of environmental agents in humans. However, the observational (non-experimental) nature of most epidemiological studies, as well as the frequent paucity of relevant data, can impose serious limitations on the method (Chapter 4, Section II).

16. Descriptive epidemiological studies (based on the measurement of disease rates for various populations), including correlational studies (in which the rate of disease in a population is compared with the spatial or temporal distribution of suspected risk factors), are useful to generate and refine hypotheses, or provide supporting evidence in evaluating relationships detected by other means, but rarely, if ever, provide information allowing a causal inference (Chapter 4, Section IV, Part A).

17. Well designed, conducted and evaluated analytic epidemiological investigations of either the case-control or cohort variety can provide the basis for causal inferences especially useful for public health decisions (Chapter 4, Section IV, Part B).

18. Elements in interpreting the likely causality of epidemiological observations include the magnitude of the risk estimates (strength of associations); the possibility of their being due to chance (statistical significance); the rigor of the study design to avoid various kinds of bias, including those related to selection, confounding, classification and measurement; dose-response relationships; the temporal relationships between exposure and disease; the specificity of the associations; their biological plausibility; and the reproducibility of the findings (Chapter 4, Section III).

19. A high-quality negative epidemiological study, while useful, cannot prove the absence of an association between chemical exposure and human cancer. Within the scope of the study, specifically for the

populations studied (including concomitant exposures), for the levels and durations of exposure to the agents evaluated and for the time assessed following exposure, a likely range can be determined for the estimates of risk and the statistical likelihood of the study to detect an effect can be assessed.

IV. Principles for Exposure Assessment

20. It is desirable that exposure routes employed in animal health effects studies are comparable to human exposure routes both for the simplification of risk assessment and because there may be important route-dependent differences in molecular, biochemical and physical parameters in organs (Chapter 1, Sections II and III).

21. At present, a single generally applicable procedure for a complete exposure assessment does not exist. Therefore, in the near term, it is expected that integrated exposure assessments (utilizing monitoring data, results from physical and chemical models, and considerations of all routes of exposure through all media) will be conducted on a case-by-case basis (Chapter 5, Section II, Part D).

22. The depth and accuracy of an exposure assessment should be tailored to provide the degree of knowledge required to support analytical needs. A preliminary assessment using available crude data can often shed light on the upper or lower bounds of potential risks (Chapter 5, Section II, Part D).

23. An exposure assessment should describe the strengths, limitations and uncertainties of the available data and models and should indicate the assumptions made to derive the exposure estimates (Chapter 5, Section III, Part F).

24. In general, an array or range of exposure values is preferable to a single numerical estimate (Chapter 5, Section III, Part F).

V. Principles for Risk Assessment

25. Decisions on the carcinogenicity of chemicals in humans should be based on considerations of relevant data, whether they are indicative of a positive or negative response, and should use sound biological and statistical principles. This weight of evidence approach should include consideration of all relevant factors and should give appropriate weight to each on a case-by-case basis (Chapter 6, Section II, Part A). Examples of the types of information that should be taken into account include:

(a) Findings from long-term animal studies (see Principle 14);

(b) Results from epidemiological studies (see Principles 16-19);

(c) Results from *in vivo* and *in vitro* short term tests (see Principles 5 and 6);

(d) Data from studies of mechanism, including factors such as structure-activity relationships, and known similarities and differences in metabolic and kinetic profiles for different species (see Principles 1-4).

26. No single mathematical procedure is recognized as the most appropriate for low-dose extrapolation in carcinogenesis. When relevant biological evidence on mechanism of action (*e.g.* pharmacokinetics, target organ dose) exists, the models or procedures employed should be consistent with the evidence. However, when data and information are limited, and when much uncertainty exists regarding the mechanisms of carcinogenic action, models or procedures which incorporate low-dose linearity are preferred when compatible with the limited information (Chapter 6, Section II, Part C).

27. The quantification of the various sources of uncertainty involved in cancer risk assessment can be as important as the projection of the risk estimate itself. The sources that might be addressed include (Chapter 6, Section II, Part D):

(a) The statistical uncertainty associated with the given risk estimate (often expressed as upper and lower confidence bounds);

(b) The variability introduced by the selection of a particular low-dose extrapolation procedure (often expressed as an envelope of risk estimates from a variety of plausible models);

(c) When risk estimation is based on laboratory generated data, the biological variability associated with the use of a particular test organism and its scaling or extrapolation to man.

28. An estimate of cancer risk for humans exposed to an agent can be no more accurate than an exposure assessment that it utilizes. Lack of adequate exposure data is frequently a major limiting factor in evaluation of carcinogenic risks for humans (see Principles 20-24) (Chapter 6, Section II, Part B).

29. While several considerations often enter the risk assessment process, it is important to try to maintain a clear distinction among facts (statements supported by data), consensus (statements generally held in the scientific community), assumptions (statements made to fill data gaps), and science policy decisions (statements made to resolve points of current controversy) (Chapter 6, Section II, Part D).

30. Differences in human susceptibility, and variable and extreme exposures to chemicals suggest the likelihood that there are subpopulations that are at greater than average risk (Chapter 1, Section III, Part C and Chapter 5, Section II, Part C). Consideration should be given to the identification of high risk populations.

31. Because of the uncertainties associated with risk assessment, a full evaluation of risk to humans should include a qualitative consideration of the basic strengths and weaknesses of the available hazard and exposure data, in addition to any numerical estimations that are made (Chapter 6, Section II, Part D).

PART II - STATE-OF-THE-SCIENCE PREFACE

Preface

This segment contains the details about the topics emphasized in Part I, and, as such, is a summary of the current science in a number of fields important to adequate risk assessment. Special emphasis has been placed on those areas considered to be particularly relevant to estimation of hazard and risk.

This section of the document is composed of six chapters. A chapter on the mechanisms of cancer induction is followed by two on testing, one each for short-term and long-term testing. These methods of hazard evaluation are complemented by a chapter summarizing a number of aspects of epidemiology, which estimates human hazard. There is a chapter on exposure assessment, a critical problem in assessing human risk, followed by the last chapter, which discusses hazard or dose-response assessment, and risk characterization and, drawing on all the other chapters, discusses risk assessment as a whole. It is clear that the limited space available in this review does not allow a totally comprehensive treatise on the various subjects involved, and specialists in the various fields may disagree with the importance of certain aspects of the discussion. The focus has been on a balanced presentation of what is consensus in the various fields discussed as they intersect with the need to understand the effects of chemical agents.

Chapter 1--Current Views on the Mechanisms of Carcinogenesis

I. Introduction

A. Philosophical Perspectives

Underlying the elucidation of mechanisms in carcinogenesis is the search for causality in this biological phenomenon in order to better evaluate and control it. Since science is continually advancing, our understanding must be periodically re-evaluated in light of new, generally agreed upon findings. Such a review is especially important in rapidly advancing, highly specialized and interdisciplinary areas that are of significance to public health. The mechanisms underlying induction of cancer represent such an area and are re-examined here in light of the findings of the last few years.

This chapter first places the understanding of the mechanisms of cancer induction in a historical perspective and provides a synopsis of some current commonly held beliefs. The bulk of the text follows, which focuses on the interaction of cancer-related agents with factors both external and internal to an organism and the consequences of such interactions at the molecular, cellular, tissue and organismic levels relative to the development of cancer. The sequence of events presented is not written to advance any specific mechanism of cancer induction, but simply to organize the presentation of the response of various levels of biological organization to cancer-related agents. It should also be appreciated that the data presented have been obtained from studies using various research model systems (*e.g.*, cell-free, cellular, whole animal) to isolate various components of the process and are derived from various strains and species treated under a great variety of experimental conditions. This comprehensive approach to the study of cancer is generally accepted for many reasons, primarily the belief that, while biological systems vary, the degree of similarity at the level of their basic processes is greater than at higher levels of integration.

B. Historical Perspectives

Studies in paleopathology have indicated that cancers occurred in pre-historic times *(1)*. The frequency of occurrence of the disease (its incidence) is hard to quantitate in antiquity, however, over approximately the last century, a relatively well-documented period, total cancer incidence *per capita* has increased *(2)*. The increase in the mean lifespan as a result of prevention and treatment of other diseases is a significant factor in this increase in incidence, however, exposure to carcinogens (*e.g.*, by smoking) is also important *(2)*. Less clear are the effects of other factors, *e.g.* increasing urbanization *(2,3)*, which would result in reducing exposure to certain agents (*e.g.*, mycotoxins, mutagens in raw sewage), while increasing exposure to others (*e.g.*, asbestos, benzene). The study of the process of carcinogenesis is at least 300 years old, with studies during the first 200 years being primarily descriptive. The influence of occupation and life-styles in cancer occurrence was first observed by Ramazzini in 1700, who noted that nuns exhibited a higher frequency of breast cancer than other women *(4)*. Subsequently, in 1761 Hill associated the use of tobacco snuff with cancer of the nasal passage *(5)* and in 1775 Pott noted the occurrence of soot-related scrotal cancer in chimney sweeps *(6)*. Based upon observations in developing systems, Weismann, in 1881, suggested an association between the "germplasm" (the reproductive or life principle) and cancer *(7)*, one of the first experimentally based theories concerning the mechanism of cancer induction. In 1895, Rehn published evidence that aromatic amines were associated with bladder cancer *(8)*, while Unna, in 1894, and Dubreuilh, in 1896, associated sunlight exposure with skin cancer *(9,10)*. In the following 50 years, with the development of appropriate models, numerous agents were found to induce cancer in experimental animals. Over the last 30 years, there has been an increased emphasis on understanding the mechanisms of carcinogenesis and, recently, on the role of factors such as diet in the enhancement or inhibition of tumor formation *(2,11-13)*. Consequently, in the last decade, more progress has been made in understanding the overall mechanisms of carcinogenesis than at any other time in history.

C. Current Beliefs

From the mass of data on carcinogenesis, a consensus has emerged on a number of important scientific issues:

First, cancer can be induced by radiation, biological, "physical" and/or chemical agents.

Second, on a biochemical and molecular level, there are important similarities among mammalian species.

Third, an estimate of the potency of carcinogens may never be exact and may vary with life style, habits, age, sex, individual genetic differences, ethnic background, test strain and/or species, diet, dose rate, route of administration, vehicle or solvent used (if any) as well as the presence or absence of other agents, and the environmental conditions prior to, during, or after exposure.

Fourth, cancer development is a multi-stage process that may involve the genome, both indirectly (frequently termed epigenetic events) and directly, which may include the participation of chemicals or viruses, and which may be modulated by higher order functions, *i.e.* at the organ and organismic level.

Fifth, numerous factors may alter the frequency of cancer induction by altering one or more of these stages.

Sixth, the genesis of a cancer appears to require an alteration in the ability of a cell to elaborate its appropriate genetic program, *i.e.*, in its information processing capacity, with the subsequent fixation and propagation of that alteration.

Seventh, we still lack an in-depth understanding of the mechanisms and stages of cancer induction and expression.

Eighth, only by understanding the stages of tumorigenesis and carcinogenesis, the substances and processes which modulate them, and how these may differ among cells, organs, individuals, strains and species will we ultimately understand the role of substances, radiations, viruses and/or life-style factors in human cancer.

II. PREABSORPTION MODIFICATION OF CARCINOGENS

Human exposure to carcinogens usually occurs by dermal contact, inhalation, ingestion, or a combination of these routes of exposure. Depending on route of exposure, an agent can be altered as a result of interaction with factors that are in association with, but not actually part of, an organism. These factors include: 1) direct transformation of chemicals by environmental factors (*e.g.*, solar radiation interacting with an agent on the surface of the skin [14]); 2) interaction with cellular secretions (*e.g.*, certain inhaled carcinogens being "coated" with lung secretions [15]); and 3) metabolic conversions by microorganisms (*e.g.*, gut microflora acting on ingested agents [16-23]). An illustration of the impact that these factors can have is exemplified by the role of the gut microflora in the metabolism of xenobiotics. It has been suggested that the potential for metabolism in the gastrointestinal tract is similar to that of the liver *(19)*. However, hepatic metabolism of non-

nutrients is predominantly oxidative and synthetic (conjugations), while reactions by intestinal microflora are mostly of a hydrolytic and reductive nature *(19)*. It also appears that intestinal microbial metabolism is most important for polar compounds that are not well absorbed from the gut and for those that are excreted, free or conjugated, in the bile *(19)*. Examples of this include the metabolism of cycasin to a carcinogenic aglycone *(18)* and enzymatic reduction of a number of azo dyes by numerous genera of anaerobic gut bacteria *(23)*. Intestinal microfloral metabolism can give rise to competition or cooperation between mammalian and microbial enzyme systems in sequential reactions in the cells and in the entero-hepatic circulation.

Intra- and interspecies comparisons of microfloral metabolism of xenobiotics have been rare. In one study, rat, monkey and human intestinal microflora exhibited the capacity to reduce several benzidine and benzidine-congener based dyes to potentially carcinogenic aromatic amines under test conditions *(16)*. Since there is a similarity between the biological effects of these dyes and the effects of benzidine on humans *(24)*, this study suggested that, for these dyes at least, gut microfloral metabolism may play a significant role in the etiology of urinary bladder cancer. Diet composition has also been shown to affect microbial metabolism. Diets with high pectin content can alter the metabolic activities of bacteria in the gut, thus directly affecting hepatic covalent binding of carcinogens *(25)*. Further studies in this area, especially in regard to the relation between gut microflora in animals with different feeding habits, *e.g.* carnivore, herbivore and omnivore, and the animal's susceptibility to certain classes of carcinogens would be of interest. Species and individual differences in microfloral composition could quantitatively and qualitatively alter the nature of the agent to which the animal is ultimately exposed and, thus, the biological response.

III. ORGANISMIC AND CELLULAR METABOLISM

A. Activation, Detoxification and Reactivation

Carcinogens include biological agents, such as some viruses *(26)*, radiations, such as X-rays and ultraviolet light *(27)*, "physical agents," such as plastic surfaces and wounding *(28)*, chemical agents, both organic and inorganic *(29)*, and combinations thereof. Chemical carcinogens occur in a number of chemical classes including polycyclic aromatic hydrocarbons and their derivatives, aromatic amines, azo dyes, nitrosamines, nitrosamides, halogenated hydrocarbons, alkylating agents and metals, their salts and metal complexes, as well as in plant and microbial products *(29)*. Ordinarily, not all chemicals belonging to any class are carcinogenic, nor are all those compounds within a class which exhibit carcinogenicity equally potent. Carcinogens may be naturally-occurring *(30,31)* (*e.g.*, in food [32]), result from industrial processes *(31,33,34)*, or represent the consequences of social activities *(35)*. With the exception of a few direct-acting agents, the organic carcinogens *(36)* and, possibly, some of the metal complexes *(37)* require metabolic activation in order to exert their cancer-inducing properties. In general, by whatever route chemicals enter the body, the enzymes involved in biotransformation of a chemical to carcinogenically active (as well as to a number of carcinogenically inactive) metabolites are part of the same mechanisms responsible for detoxication of drugs. Included in this interpretation of the detoxication mechanism is the partitioning of a compound and its metabolites into various body compartments and the effects of differing physiology (blood pH, blood flow to various organs, etc.) on the distribution of the compound and its metabolites. For example, the prolonged retention of acidic urine in dog and man, compared to the rat, can result in a very different profile of aromatic amine metabolites than in the rat, due to the effect of a lower urine pH over a longer time on N-hydroxyarylamine conjugates *(38)*. Realistic modeling can be very useful to understand the mechanisms of the effects of an agent, however: 1) a detailed analysis (*e.g.*, pharmacokinetics) can become quite involved and the simplifying assumptions used in deriving tractable equations may be inimical to realistically modeling the *in vivo* situation; 2) the data required for modeling are often unavailable; and 3) care should be taken in defining the "effective dose" when the mechanisms of carcinogenic action are unknown *(39)*. Also included in considering metabolism is the *total* metabolic potential of the organism. For instance, nasal epithelium can activate chemical carcinogens *(40)*, a consideration especially important to understanding the effects of exposure by inhalation.

The enzyme systems involved in biotransformation can be divided for convenience into two groups that convert a compound into either a phase 1 or phase 2 metabolite. Phase 1 metabolites are primary oxidation or reduction products, which are usually more water soluble than the parent compound and thus may generally be more easily eliminated from the body. These metabolites may be then conjugated with various soluble intracellular constituents, forming glucuronides or sulfates, to become even more water soluble and available for excretion from the body. These conjugated metabolites constitute the phase 2 metabolites *(41)*, which are usually excreted. However, deconjugation prior to excretion may release an active carcinogen at a site distant from the site of conjugation *(38,42)*.

The reactions that occur in the formation of either phase 1 or phase 2 metabolites require specific enzymes for their conversion (some of the better characterized of which are listed in Table 2). Interactions between a chemical carcinogen and these metabolizing systems may form a large spectrum of phase 1 and phase 2 metabolites. A generally accepted mechanism for the reaction of metabolically activated agents with the cell has been proposed by Miller and Miller *(36)*, namely that the ultimate carcinogenic forms of organic chemical carcinogens are electrophilic (electron deficient) reactants that bind with target intracellular nucleophilic (electron-rich) macromolecules such as DNA and proteins. The reactive metabolites formed may also react with other nucleophiles such as glutathione or water *(43-44)*. Through these latter processes, the effects of agents can be neutralized by forming less biologically reactive metabolites that are very polar and may be more easily excreted. The efficiency of this neutralization is an important factor in tumor induction. For example, if detoxification by glutathione is efficient, the effective local concentration of the active metabolites of the agent is usually reduced, which results in decreased binding to macromolecules. However, the electrophilic properties of some chemicals may be enhanced by glutathione conjugation *(45)* (although this is exceptional). Thus, determining the details of chemical biotransformation is desirable when assessing the impact of a chemical.

Understanding the metabolism of chemical carcinogens is often complicated by the diversity of the enzymatic reactions. For example, while for aromatic amines and related compounds, the N-hydroxy derivatives may be the only phase 1 metabolites

needed for generation of the nitrenium ion-species that bind with target intracellular macromolecules *(38,46)*, the common metabolic activation of nitrosamines and nitrosamides occurs via the formation of diazo intermediates, which subsequently decompose to molecular nitrogen and active alkyl carbonium ions *(29)*. To illustrate the complexity of metabolism of a chemical carcinogen, most of the known metabolic pathways and the phase 1 metabolites formed from benzo(a)pyrene, one of the most ubiquitous of environmental animal carcinogens, are shown in Figure 1. Many of these metabolites can be converted to different conjugates by phase 2 enzymes. Also, the enzymes cytochrome P-450 and epoxide hydrolase exhibit high selectivity for a particular molecular region and its local conformation *(47)*. This results in arene oxides, *trans*-dihydrodiols and *trans*-dihydrodiol-epoxides being formed as specific optically active isomers (enantiomers). These enantiomers exhibit markedly different biological activities *(48)*.

TABLE 2 - SOME ENZYMES NEEDED FOR PHASE 1 AND PHASE 2 REACTIONS

phase 1

(1) Enzyme systems containing cytochrome P-450 and the FAD-containing monooxygenase catalyze epoxidation of aromatic rings or olefinic double bonds, produce hydroxylation of aromatic rings or alkyl chains, perform oxidative dealkylation, and N-oxidation *(44)*. This system occurs mainly in the endoplasmic reticulum of liver, kidney, lung and intestine. The enzymes may occur in multiple forms and exhibit different or overlapping substrate-specificity *(44)*.

(2) Epoxide hydrolase catalyzes the hydrolysis of arene oxides and alkene oxides into *trans*-dihydrodiols.

(3) Dehydrogenases, flavin-containing cytochrome P-450 reductases and xanthine oxidase catalyze the reduction of nitroaromatics to nitrosoarenes, N-hydroxyarylamines, and arylamines, and the reduction of azo compounds to amines.

phase 2

(1) Glutathione S-transferases catalyze the conjugation reaction between glutathione and a variety of electrophilic compounds such as arene oxides (these enzymes are known to exist in multiple forms) *(44)*.

(2) UDP-glucuronyltransferases catalyze the conjugation reactions between glucuronic acid with substrates such as phenol and bilirubin. These enzymes are also found in multiple forms *(44)*.

(3) Sulfotransferases catalyze sulfate ester formation.

(4) N-Acyltransferases and N,O-acyltranferases catalyze N-acetylation and N,O-acyltransfer of aromatic amines and arylhydroxamic acids.

Simply knowing the identity of the major metabolites of a compound may not always allow prediction of its hazard. For example, metabolism of polycyclic aromatic hydrocarbons to *trans*-dihydrodiols was long known, but thought to be a pure detoxification process *(49)*. However, identification of the anti-isomer of the dihydrodiol-epoxide of benzo(a)pyrene, which is derived from the *trans*-7,8-dihydrodiol (Figure 1), as the electrophilic metabolite of benzo(a)pyrene which binds DNA (ultimate carcinogen) has proven that some *trans*-dihydrodiol metabolites can be enzymatically activated *(50-51)*.

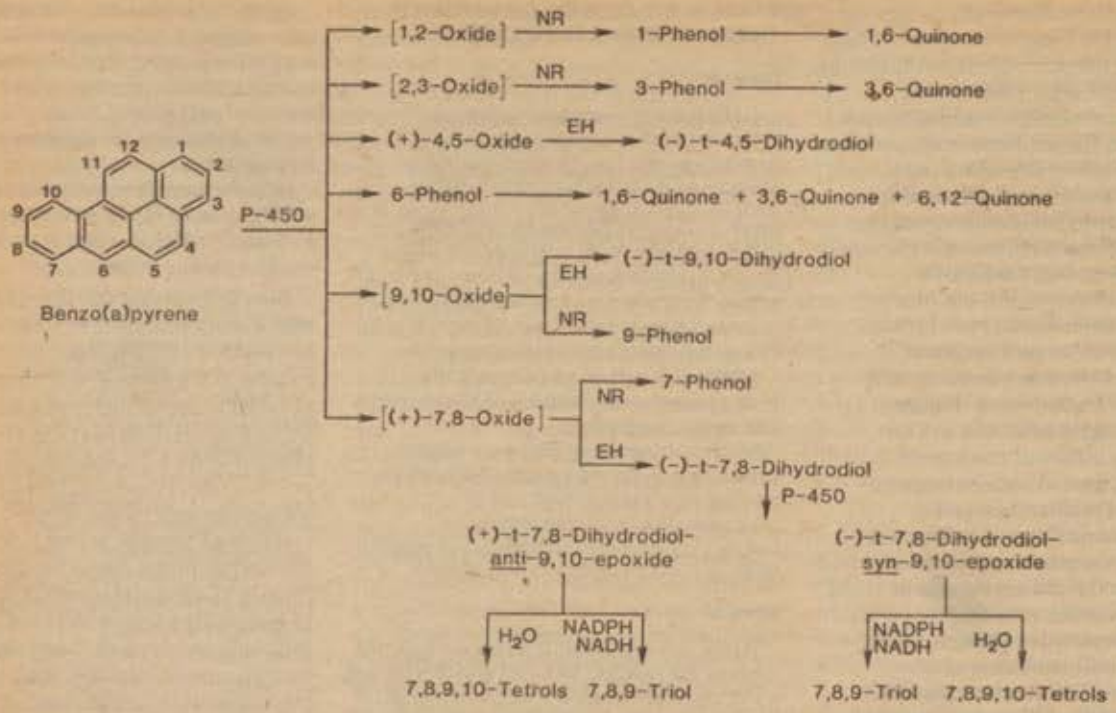


Figure 1. Metabolic pathways and metabolites of benzo(a)pyrene obtained from metabolism by rat liver microsomes. Abbreviations: P-450, Cytochrome P-450 containing enzymes together with cofactors; EH, Epoxide hydrolase; NR, Non-enzymatic rearrangement; t, *trans*

Additionally, detoxified metabolites formed in the liver may be reactivated in other organs, *e.g.* the bladder *(38)*. The metabolic fate of a compound is a function of a number of processes occurring together (activation, deactivation, and reactivation), whose dynamic interaction results in the local concentration and lifetime of the active metabolite(s). The combination of whole animal, organ and cellular processes results in a local variable dose-rate of active species with time. These changes may be significant factors in producing the biological effects seen with a particular agent.

B. Modulation of Metabolism

Compound metabolism is a function of the processes in tissues described above, in combination with the cellular, organ and whole animal distribution and excretory processes. This dynamic interaction can be modulated by a number of factors. Such factors include enzyme inhibitors, enzyme inducers, metabolite scavengers (see below), starvation, age, sex, stress, tissue ablations, nutritional factors, individual genetic differences, and hormonal status *(44,52)*. Various synthetic chemical agents have been shown to act as inhibitors, inducers, or scavengers *(53)* and this diversity of effects has been suggested as well for some commonly eaten foods, which contain naturally occurring inhibitors or inducers, and which also appear to modulate metabolism *(2,32)*. Briefly, there are three general mechanisms accounting for the modulation of metabolism by inhibitors or inducers *(53)*: 1) Stimulation of cellular metabolism which results in an increased deactivation and/or activation. For example, a wide range of compounds including polycyclic aromatic hydrocarbons, phenobarbital, flavones, halogenated hydrocarbons, and indoles induce an increase in monooxygenase activity and changes in the relative proportions of the different isozymes. Other enzymes, such as glutathione S-transferases, may simultaneously be enhanced. Affinity constants may be altered. As a consequence of any and all these changes, the relative proportions of various metabolites may change, thereby influencing the ratio of metabolic activation to deactivation *(54)*. 2) Interference with enzymatic activation of chemical carcinogens to form the ultimate carcinogenic metabolite(s). For example, disulfiram is thought to inhibit dimethylhydrazine induced neoplasia of the large bowel by directly reducing the rate of conversion of the agent into a reactive metabolite *(53)*. 3) Alteration of scavenging

(neutralization) of the reactive metabolites by nucleophiles, such as glutathione, or other defense systems, such as superoxide dismutase. For example, starvation, other nutritional imbalances, or compounds such as butylated hydroxyanisole may drastically alter glutathione levels *(55-56)*. Decreases in glutathione levels may lead to a decreased proportion of the reactive metabolite being detoxified. Conversely, the increased levels of glutathione and glutathione transferase produced by butylated hydroxyanisole may indicate greater detoxification of a reactive metabolite, provided that the glutathione conjugate products are not reactivated.

However, it is the balance between the activation, detoxification and reactivation systems for a chemical carcinogen, and their interaction over time, rather than the change in one of these processes *per se*, which is important. If monooxygenase activity has been stimulated, resulting in increased reactive metabolite formation, a greater proportion of biologically available carcinogen will result only if the detoxification mechanisms cannot compensate. An example of compensation using another toxic endpoint involves low doses of acetaminophen, whose reactive metabolite reacts with glutathione, and which will not be hepatotoxic *(57)*. However, larger doses will deplete the glutathione pool and result in hepatotoxicity. Alternatively, if glutathione levels are decreased, concentrations of electrophilic metabolites may increase.

The use of various chemical modulators has contributed significantly to our understanding of the metabolism and disposition of chemical carcinogens. With extended research into the mechanism of action of these agents, the use of such modulators may, in the future, aid in the treatment of individuals accidentally exposed to high doses of certain chemical carcinogens. However, at present, it would be premature to state that modulators will be generally effective in preventing cancer induction by some chemicals or that such agents could ever be used as an alternative to reducing or preventing exposure to identified carcinogens. An indication for caution is the demonstration that coadministration of aspirin, which modulates the metabolism of N-[4-(5-nitro-2-furyl)-2-thiazolyl]formamide (FANFT), a potent rat urinary bladder carcinogen, will decrease the number of bladder tumors induced by FANFT, however, at the same time, it will increase the number of forestomach tumors produced *(58)*.

C. Organ and Species Differences

Because the total enzyme level and substrate specificity of the phase 1 and phase 2 metabolizing enzymes exhibit organ, individual, and species differences *(52)*, the metabolic patterns of both activation and deactivation of a particular agent could also differ markedly. Examples of this are the differences in the monooxygenase activities in nasal epithelium in different species *(59)*. Also, there exist multiple forms of cytochrome P-450 enzymes, each of which exhibits its own specificity toward the substrate metabolized *(44)*. Since glutathione S-transferases and UDP-glucuronyltransferases also occur in multiple forms *(44)*, their particular form in different tissues, strains, individuals or species may also vary. Moreover, the activity of each metabolizing enzyme in a specific tissue of the same strain could vary widely depending on age, sex, nutritional factors, hormonal status, or other factors *(31)*. For these reasons, unless one knows the rates of the activation-deactivation processes and the participating isozymes responsible for these reactions, it is impossible to predict quantitatively the metabolic activation of chemical carcinogens from an *in vitro* to an *in vivo* system, or from laboratory animals to humans. Metabolic comparisons between animal species and humans, when the metabolic pathways are similar, could be useful for qualitative assessments of the relevance of a specific animal test system to human risk. Presently, however, a paucity of comparative metabolism data on either induced or noninduced systems exists since most studies are based on an ontogenetic rather than a molecular-evolutionary approach *(60)* and are therefore of limited use for extrapolation of data between species and organs. There is also expected to be, because of these variabilities, a wide range of responses in different members of a species, leading to individuals with different levels of sensitivity to agents.

IV. MACROMOLECULAR INTERACTIONS

A. Alterations in Genetic Information

Modification of the information content of cells is believed to be one of the events involved in the onset of carcinogenesis *(61)*. Although macromolecules such as RNA *(36)*, protein *(62)*, and lipid-containing membranes *(63)* will be altered by many carcinogens, and may be important at different stages in carcinogenesis, it is believed that the primary initial site for cancer induction is the DNA. The evidence for this hypothesis rests on a number of observations: 1) the great majority of biological carcinogens that have been examined interact with the DNA of the host cell *(64)*; 2) many, but not all, radiations and chemical carcinogens are mutagens and mutations result from alterations in the DNA *(65)*; 3) individuals with certain genetic diseases which are characterized by defective DNA repair, such as xeroderma pigmentosum, are prone to cancer at a number of sites and cells from these individuals have increased sensitivity to several radiations and chemical mutagens *(66-68)*; 4) ultraviolet (254 nm) light-induced tumor formation in the gynogenetic fish, *Poecilia formosa*, is directly related to the amount of DNA damage remaining after different levels of photoreactivation repair of the DNA *(69)*. Factors which influence the expression of cancer cells may or may not act on the DNA during different stages. These factors will be referred to throughout the text, but especially in the subsequent sections on promotion, progression and multiple agents.

The changes in information content of DNA can take many forms such as integration into DNA of viral information for biological carcinogens, chromosomal alterations with radiations, and changes in the base sequence after replication as a result of adduct formation with many chemical carcinogens.

1. Biological Carcinogens. Many viruses will induce cancer in various organs of one or more species *(70)*. The most progress made recently in understanding the mechanisms of viral carcinogenesis relevant to human cancer involves *onc* genes, expression control elements, dominant transforming genes and human viruses.

a. *Onc* genes

Studies on oncogenic RNA viruses have provided the background for detailed investigations of genes in the cell with oncogenic potential and for development of methodologies enabling identification and isolation of dominant transforming genes in human tumor cells *(71-84)*. This approach has helped identify genetic elements that may be responsible for certain types of cancer. A major class of RNA tumor viruses, known as retroviruses, has been particularly useful in providing new insight into the cancer process. Retroviruses are unique among animal

viruses in their mode of transmission and their intimate association with a wide variety of vertebrate species *(85)*, factors which may have allowed them to become oncogenic in a number of species. Certain members of this group, the acute transforming retroviruses, appear to have arisen by recombination of the viral genome with cellular genes. The acquisition by these viruses of cellular genes, termed *onc* (for oncogenic) genes *(86)*, is associated with the ability of these viruses to induce rapid neoplastic disease in newborn animals and to transform cells in culture, an *in vitro* model for carcinogenesis. These genes (the number isolated, at present about two dozen, is steadily increasing) appear to be of major importance to the cells since some have been conserved in widely divergent species *(87)*. The RNA tumor viruses containing them can be thought of as vectors that carry isolated cellular-derived genes critical for malignant neoplastic disease.

The genes in the normal genome of a cell which appear to have given rise to the *onc* genes, presumably as a result of viral infection, are termed proto-oncogenes. There are human genes homologous to retrovirus *onc* genes *(88-92)* and specific *onc* genes can be identified in many different human cancer cells *(93)*. Some *onc* genes are rarely expressed, some are expressed chiefly in specific kinds of cells derived from malignant tumors, and some appear to be expressed only in cells of certain lineage or differentiation states *(94-95)*. The specific cellular functions coded by most *onc* genes are unknown, although a variety of activities has been found. The gene product of one family of oncogenes, *src*, is a protein kinase, usually tyrosine specific *(96)*, similar to the kinase often activated by binding of a number of growth factors to their receptors. Interestingly, phorbol tetradeconate acetate (TPA) (an important model compound in tumor promotion) (see below), may substitute for diacylglycerol and permanently activate protein kinase C, a tyrosine specific protein kinase *(97)*, which phosphorylates insulin and somatomedin receptors *(98)*. *ras* p21 protein seems to have a guanosine triphosphatase activity *(99)*. Sometimes, only pieces of a cellular protein are coded, *e.g.*, *erb*-b codes for the integral membrane and large interior portions of the epidermal growth factor receptor *(100)* and *fgr* seems to produce a hybrid protein resulting from the recombination of actin and part of a tyrosine specific protein kinase *(101)*. The *onc* gene of simian sarcoma virus was probably derived from genetic material encoding platelet-derived growth factor (PDGF), which is a growth factor in the type of tissue which becomes cancerous as a result of this virus *(102)*, while *c-myc* seems to mediate the mitogenic response to platelet-derived growth factor *(103)* by localizing in the nucleus, perhaps by its DNA-binding properties *(104)*. This is especially interesting in that it has been shown that at least two oncogenes, *ras* and *myc*, can work together to transform primary fibroblasts in culture *(105)* (although *Ha-ras-1* can be effective alone if it is mutated [106]). When an *onc* gene is expressed at high levels, an increase in gene dosage or expression has been correlated with the transforming activity of the virus *(89)*. Alternatively, there is some evidence that the removal of a suppressor or regulatory gene, with the possible involvement of an oncogene as a second step, may be important in human retinoblastoma *(107)*, while *erb*A (similar to carbonic anhydrase) blocks differentiation of immature erythrocytes and potentiates the effects of *erbB (108)*. It appears that any step in the growth regulation of cells, from receptor through kinase and nuclear changes, can be affected by different oncogenes.

These data also suggest that there is a two part model for transformation. The first part centers around the stimulation of some growth factor, and the second, an alteration in the cell nucleus. The first part may also involve the interaction of a cell with other cells, as growth factors can be elaborated *(109)*, and the second may be an intrinsic change in the cell itself. Although this is a speculation, and there are important gaps in information, a general picture of the mechanism of viral carcinogenesis is starting to emerge which also may be very important in understanding chemical carcinogenesis since activated oncogenes are seen in chemically induced rodent tumors (*e.g.*, *ras* in rat nitrosomethylurea induced tumors [110]).

b. Expression control elements

Some normal cell *onc* genes can be activated when linked with expression control elements (ECE) derived from the retroviruses *(71,111-112)*. The ECE regulate the level of expression or gene dosage of the retrovirus genome in an infected cell and can be used to "switch on" expression of other genes. Recent studies suggest that when the ECE is linked to an *onc* gene it activates the gene's transforming potential by increasing the gene's level of expression *(111)*. *In vivo*, the same two factors, *onc* and ECE, which appear to link by chance, have been shown to be responsible for oncogenesis in animals infected with certain retroviruses *(111)*.

The viruses from which the acute transforming retroviruses seem to have originated, the leukemia retroviruses, usually cause leukemias or lymphomas, but can also cause a variety of other neoplastic diseases in animals after long latent periods *(85)*. When these viruses infect a large population of cells, viral genetic information can integrate at many loci in the host genome. The stable integrated form of the virus (called the provirus) is bracketed by the same ECE described above. These ECE are virus specific and are generated during the integration process *(113)*. In some instances these viruses will integrate at loci in the host chromosome adjacent to cellular *onc* genes and will cause neoplastic disease *(114)*. Similar to the situation described above for the acute transforming retroviruses, this specific integration results in elevated levels of expression of a specific cellular *onc* gene which becomes regulated by the viral ECE. The long latent period required for neoplastic disease induced by these viruses may be associated with the frequency of or time to specific integration in the host chromosome adjacent to a cellular *onc* gene of the viral ECE.

Some radiations and chemical carcinogens might enhance either the frequency of initial integration of the virus or subsequent rearrangement of viral material by inducing chromosomal translocations. In Burkitt's lymphoma, a characteristic portion of human chromosome 8 (carrying *c-myc*) is translocated to chromosome 14, and the site of immunoglobulin heavy chains *(113-115)*. This *onc* gene is the same one activated by a retrovirus transcription control element in avian bursal lymphoma disease *(116-117)*. Also, *c-abl* is translocated in chronic myelocytic leukemia patients with a Philadelphia chromosome (a translocation of the gene from chromosome 9 to chromosome 22 adjacent to an immunoglobulin light chain cluster of genes) *(115)*. Such translocations might conceivably result in the juxtaposition of an *onc* gene and an ECE, altering *onc* gene expression. The same result might arise from direct genetic insult (*via* some carcinogen) to the ECE which normally regulates expression of the cellular *onc* gene.

Considerable study is now being focused on ECE. It has been known for some time that certain nucleotide sequences which bracket structural genes are associated with the initiation and termination of gene expression *(119)*. However, it was first shown with transforming genes that a region termed

"enhancer" must be present in order for these start and stop signals to be recognized *(71,111,120,121)*. Although it is not yet known how enhancers function, appently they can be located in a number of different positions surrounding the structural gene. Moreover, even though the few that have been examined bear no sequence homology, the enhancer sequences from retroviruses have been shown to function and allow expression of a DNA tumor virus, SV40 *(121)*. Also, the sequences seem to be utilized in normal differentiation, as shown by the evidence that immunoglobulin heavy-chain class switching in a pre-B cell line is accompanied by gene rearrangement *(122)*, and, in the development of Burkitt's lymphoma, the activation of the translocated c-myc gene seems to occur by an enhancer in the heavy-chain immunoglobulin locus *(123)*. It is possible that translocation into a region controlled by an enhancer or mutations in gene enhancer or activator sequences of cellular *onc* genes could participate in expression of a transforming phenotype.

c. Dominant transforming genes

Another area of considerable study during the past two years has been the direct isolation of dominant transforming genes from human tumor cell lines (82-84). A biological assay referred to as transfection was used early in tumor virology to demonstrate that host genomic DNA containing dominant viral *onc* genes could be transferred to normal cells *(85)*. The early studies were developed and refined using cells transformed with acute transforming retroviruses; they demonstrated clearly that the integrated provirus could be transferred as part of the cellular genomic DNA into specific cell lines capable of assimilating foreign DNA into their chromosomes. By using this technology it has been possible to transfer dominant transforming genes from a variety of tumor cell lines from different species, including human. These include genes from human lung cancer, colon cancer, bladder cancer, and breast cancer cell lines *(82-84,124-126)*. Utilizing recombinant DNA techniques, it has also been possible to identify and isolate (in certain instances) these dominant transforming genes from the transformed recipient cell and to show that these isolated genes are of human origin *(82-84)*. In the molecular cloned state, the genes have high oncogenic potential. It is of particular importance that some of these genes (for example, genes associated with human bladder, lung, and colon cancers) are related to a specific family of retroviral *onc* genes *(127-129)*. In the case of a human bladder cancer gene, a single base change in a normal human gene results in expression of its oncogenic potential *(130-131)*. Also, in the case of chemically induced tumors, there is suggestive evidence that the activation of an oncogene can occur by a single base change *(110)*. The study of RNA tumor viruses has provided an initial understanding of how viral *onc* genes cause cellular transformation. The correlation with human *onc* genes provides an enormous leap in our understanding of causal factors in human neoplastic disease.

d. Human viruses

Recently, retroviruses of the kind that cause leukemia in animals have been isolated from humans. These human leukemia viruses (HTLV) are known to be associated with several types of T-cell leukemias in man *(133-134)*. When they are transmitted to normal human T-cells, they induce a morphology, behavior, and phenotype similar to those naturally occurring in transformed cells isolated from individuals with T-cell leukemia and lymphomas *(135)*. This virus, the presence of which correlates with clusters of the disease, thus may represent a true human cancer virus *(136-137)*. Other viruses, such as herpes viruses, especially Epstein-Barr virus (EBV), hepatitis B virus, and papilloma viruses, have also been associated with human cancers *(138)*. Although these viruses do not fit all the presently recognized criteria for a true human tumor virus, they may nonetheless influence the development of certain human cancers. Thus, EBV appears to be a stimulus for proliferation of B-cells which may be an early event in the development of African Burkitt lymphoma *(139)*. Herpes simplex, a DNA virus, is associated with cervical cancer *(140)*, and hepatitis B virus to liver cancer *(141)*. Papilloma viruses cause benign skin growths (warts) and some strains have recently been shown to be associated with squamous cell carcinoma *(142)*. Much current work is focused on a possible similar role for papilloma viruses in cancers of the genital tract and accessory organs *(143-144)*. How, and even whether, these and other viruses play a role in various types of cancer or interact with various "physical" and chemical carcinogens is poorly understood; but the belief that DNA is a critical target for the biological carcinogens is strongly supported by current studies. New methodology to prepare antibody - using chemically synthesized peptides from nucleic acid sequences - makes it possible to generate antibodies against several different *onc* gene products *(145)* and to characterize the molecular properties of the transforming proteins in transformed cells. This method should aid in developing a better understanding of how chemicals and viruses interact with one another.

2. Radiation. Radiations, both ionizing (the corpuscular radiations and X and gamma-ray photons) and non-ionizing (ultraviolet light [UV]), have been shown to act as carcinogens *(27)*. Ionizing radiations are ubiquitous, with cosmic rays and naturally-occurring radioisotope decay being examples of major sources of background radiation. UV is also ubiquitous, being a component of sunlight.

Carcinogenesis by ionizing radiations is generally related to the spatial distributions within cells of the ionizations they produce *(27)* as well as total dose, dose rate and fractionation, and target tissue *(146)*. The deposition of energy which results from the interaction of radiation with biological media creates ions, free radicals and excited molecules *(146)*. The free radicals are thought to be most important product since: 1) hydroxyl free radicals are involved in some of the biological effects of radiation *(147)*; 2) chemicals that are cellular free radical scavengers inhibit the ability of ionizing radiations to transform cells *in vitro (148)*; and 3) chemicals involved in protection from free radicals (*e.g.* selenium, which is important in the action of glutathione peroxidase, an endogenous scavenger system) inhibit radiation-induced transformation *(148)* (these data also indicate a role for modulators of metabolism in radiation-induced carcinogenesis, since enzyme systems may be modified by metabolic changes). Free radicals will react with many cellular macromolecules, but the production of DNA single-strand breaks, double-strand breaks, chromosomal aberrations, and the production of mutations by ionizing radiation, argue that the DNA is the critical cellular target for the biological effects (although the relationship of any of these phenomena with carcinogenesis is not definitive)*(146)*. Although experimental dosimetry is much better defined for radiation compared to most chemical agents, the molecular lesion(s) significant for carcinogenesis is (are) unknown and may be different for different radiations (one example of a possibly significant lesion is the reaction of the hydroxyl radical with the deoxyribose in DNA, which results in DNA strand breakage [129], although many other lesions are formed). The absence of "radiolabelled adducts,"

common for many chemical agents, has hampered analysis.

UV photocarcinogenesis is wavelength dependent with UVB (photons with a wavelength of 280-320 nm) being most effective on mouse skin *(150)*. Although the photoproducts produced by UV irradiation in cells are myriad *(151)*, reaction with the DNA has been shown to be the critical factor in carcinogenesis. There are a number of lines of evidence which suggest this: 1) in patients with actinic keratoses (a premalignant condition) the DNA repair capacity for UV-induced damage (UV excision repair) in lymphocytes was found to be less than in matched controls *(152)*; 2) individuals with xeroderma pigementosum, who exhibit a predisposition for sunlight-related cutaneous malignancies (although having a number of genetic complementation groups) were found to be deficient in the ability to repair damage induced by UV *(67)*; 3) by use of antibodies, DNA has been shown to be altered immediately and directly by UV irradiation *(153)*; 4) the persistence of UV photoproducts after photoreactivation, a repair mechanism which specifically corrects pyrimidine dimers in the DNA induced by UV, is directly correlated with the capacity of UV-irradiated tissue to develop into tumors *(69)*; 5) the action spectrum (relationship of intensity of a biological response to frequency) of UVB photons is the same for their carcinogenic action and the production of pyrimidine dimers in mouse skin *(154)*.

It is important when making estimations of risk for chemical agents that we realize that many of the tenets upon which these estimations are made are based upon information from radiation carcinogenesis. For example, the hypothesized mechanisms of the action of radiation, while not the primary concern of this document, have served, and continue to serve, as the basis for some of the primary models for chemical carcinogenesis *(155–156)*. Much evidence that damage to the cellular DNA is a step in the induction of tumors comes from studies using radiation. Similarly, various models for high-dose to low-dose extrapolation have their origins in studies using radiation and the best data for these models have been obtained from such studies.

3. Chemical Carcinogens. The interaction of chemical electrophiles with DNA, as discussed in the section on metabolism, may lead to covalently bound adducts, intercalations, strand breaks, phosphotriesters, crosslinks, apurinic sites, apyrimidinic sites, deaminations, and/or hydrations, all of which are forms of DNA damage that may alter genetic information *(53,157-169)*. Studies of chemical carcinogenesis have focused on covalent adducts. Examples of this are the observations that: 1) simple alkylating agents can methylate or ethylate any of the nitrogens or oxygens in either of the four bases in the DNA as well as the sugar residues and phosphate backbone of the DNA *(170)*; 2) the epoxide derivatives of aflatoxin can attack the N-7 position of guanine *(171)* (as well as other sites); 3) activated aromatic amines attack the C-8 and N-2 position of guanine *(172-173)*; and 4) the dihydrodiol epoxide derivatives of benzo(a)pyrene and certain other polynuclear aromatic hydrocarbons attack the N-2 position of guanine and, to a lesser extent, form adducts with adenine and cytosine *(174-175)*. Activated derivatives of these and other carcinogens form similar lesions in the DNA of a number of diverse tissues and species *(175-176)*.

The biological significance of these alterations in the DNA is not always clear, and different alterations may have very different biological effects. Some alterations may cause mutations *(177-178)*. For example, certain modifications of the O-6 position of guanine will cause this base to be misread, during DNA replication, as adenine *(179)*. Also, the major guanine adduct of benzo(a)pyrene, through a transversion, may be misread as a cytosine or thymine in replication *(180-181)*. Alterations in the control of DNA are possible. The amount of methylation of DNA, which may be used in the control of genetic expression *(182)*, can also be altered by some agents. Some of the carcinogenic metal complexes may work through alteration of the enzyme that replicates DNA (DNA polymerase) to cause alterations in the genome through miscoding of DNA bases after replication (this will be discussed in detail in the section on fidelity/infidelity of replication).

4. "Physical" Carcinogens. This class of carcinogens encompasses a number of very diverse phenomena including skin abrasion, scar formation, implantation of non-reactive materials (foreign bodies), schistosomiasis, etc. (the term physical carcinogen also is sometimes used to refer to radiation, *i.e.* a physical agent). Common factors of this class seem to be: 1) the need for the development of a chronic fibrosis, or at least an inflammatory response; and 2) the observation that chemical properties, *e.g.* of a foreign body, are not important *(28)*. An interesting mechanism, with a number of steps, proposed for foreign body carcinogenesis may be relevant to the whole class. During tumor induction, there is an acute inflammatory response with an outgrowth of capillaries as cells adhere to the surface of the foreign body. This response is induced by a number of substances (including mitotic stimuli similar in some ways to growth factors), elaborated by cells in the vicinity of the foreign body. Fibroblasts increase in number, which leads to tissue deposition of collagen (fibrosis). After a latent period, uncontrolled proliferation begins *(183)*. The initiation event seems to occur away from the foreign body surface, inducing an initiated cell through changing the environment of the cells in the vicinity of the foreign body *(28)*. However, the inflammatory response results in an active cellular proliferation of a number of vascular-derived cells (this step can also occur in the inflammatory response generated by the other "physical" carcinogens). By its presence, the foreign body causes the macrophages to become quiescent and the reactive tissue to develop into a chronic fibrotic state, so that there is surface-independent maturation of the initiated cell *(28)*. Asbestos, which is frequently considered a member of this class, may induce cancer by a different pathway since, unlike other "foreign bodies", fragments of asbestos fiber are incorporated into and activate macrophages, as well as slowly dissolve components *(184)*. However, the end result is a fibrosis, *i.e.* asbestosis, which, though more diffuse, is similar in many ways to fibrosis induced by the foreign bodies *(28)*. The size of the asbestos fiber and the possibility of chemical effects because of fiber dissolution of adsorbed molecules make direct comparison with foreign body cancers difficult.

It is not clear how, if at all, this class of carcinogens interacts with the genome. Speculations include: 1) no interaction with the genome, with the recruitment of omnipresent previously initiated cells by a proliferative stimulus into neoplasia; 2) the environment of the inflammatory response, especially the production of free radicals by macrophages, causes chromosomal damage and rearrangement resulting in transformation; and 3) a stimulation of proliferation may result in mutation as a result of infidelity of replication (see below); however, there is little information in the area.

5. General Statements. The interaction of electrophiles, or the products of irradiation, with DNA can play a role in the induction of a tumorigenic

phenotype through either of two mechanisms: 1) directly by altering genetic material through a somatic mutation *(177)*; or 2) indirectly by altering gene expression *(182)*. Somatic mutation, for example, can arise from the direct interaction of DNA with electrophiles, free radicals derived from carcinogens, or with activated oxygen produced by metabolism of the agent. The alteration of gene expression can arise from either: 1) a direct mutational event in a regulatory gene controlling expression (*e.g.*, base transition) *(177,185)*; 2) changes in gene expression resulting from an increased rate of abnormal base incorporation due to enhanced DNA synthesis, or abnormal methylation of nucleic acid bases *(182)*; or 3) induction of genetic transpositions or gaps in the DNA leading to an alteration in gene expression (higher order alterations) *(189)*. Direct alterations in the informational content of cells seem to be common for many carcinogens. The potential involvement of an *onc* gene with either direct or indirect alteration of the genome has been discussed in a previous section.

Understanding the significance of these changes may now be possible with the recent development of new methods to determine the structural alterations caused in DNA by chemical carcinogens and radiation *(187)*. This has occurred as a result of recent advances in spectroscopic and spectrometric instrumentation, especially in the areas of nuclear magnetic resonance spectroscopy and mass spectrometry. Significant progress has also been made in understanding the effect of carcinogens upon DNA's higher-order structure *(188-190)*. For example, recent studies have demonstrated that while methylating and ethylating agents do not induce major steric changes in DNA, aromatic amines induce "base displacement" *(191)*. Additionally, the carcinogen 2-acetylaminofluorene appears to induce a flip from a conventional right-handed DNA helix to the left-handed Z form *(174,191)*, which may induce changes in gene regulation *(190)*. Such changes, while not induced by all chemical carcinogens could, if they occur *in vivo*, suggest mechanisms by which chemicals induce major steric alterations in the structure of DNA. The biological consequences of such changes, however, are uncertain. Even newer techniques are being developed, such as radioimmunoassays using monoclonal antibodies against specific forms of DNA damage *(192)* and reversed labeling methods that are able to detect a single damaged base per cell *(193)*, that may eventually allow routine estimation of DNA damage in humans and better estimation of its biological effects.

V. MODULATION OF ALTERED GENETIC INFORMATION

For many carcinogens, it is necessary for cellular proliferation to occur before the damage induced by a given agent is expressed. For instance, a cell replication must occur within 48 hours to express X-ray induced transformation in cell culture *(194)*. Replication must also occur *in vivo* in liver *(195)*. One way to think about the process is that a cell is first "primed" for alteration by interaction with a carcinogen; cell replication then results in at least one daughter initiated cell, *i.e.* a cell irreversibly altered so that it can interact with the proper stimulus to form a malignant cell.

The alteration of genetic information that produces the initiated cell is modulated by a number of factors. Two of the most important are: 1) the amount of DNA damage (adducts, strand-breaks, etc.) that is removed from the "primed" cell and its daughters (DNA repair); and 2) the accuracy of DNA synthesis (fidelity/infidelity of replication), both as a result of damage to the genome and as a result of changes in cellular parameters (ion concentrations, etc.).

A. DNA Repair

DNA damage is believed to be one of the primary factors in chemical carcinogenesis. The bulk of evidence for this assertion comes from studies implicating UV and ionizing radiation as etiologic agents in cancer induction *(197*, see also Section IV. A, this chapter). For example, as discussed above, individuals with xeroderma pigmentosum who are defective in repair of UV-induced and some forms of chemically-induced DNA damage *(67)* exhibit a high incidence of light-related cancers *(198)*. More generally, the available data are equivocal as to whether there is an increased risk of development of cancer of the internal organs *(68, 199)*. Problems with interpretation of these observations include: 1) chemically-induced and UV-induced damage may induce cancer by different means; 2) organ specific differences exist for cancer induction; and 3) the time to tumor may differ significantly between organs and death of the individual due to complications arising from the skin tumor prior to the onset of cancer in an internal organ or tissue. Also, however, the databases may have been too small to support any conclusion and a larger study may resolve any problems.

Because of the importance of DNA damage, a number of short term bioassay systems that measure it, directly or indirectly, have been developed to screen for potential carcinogens (see Chapter 2, this volume). One of the most important modulators of the amount of DNA damage an agent causes, DNA repair, has been studied in numerous *in vitro* and *in vivo* biological systems *(200)*.

From these studies, various pathways for repair of numerous forms of DNA damage have been identified (Table 3) *(204-250)*. Many of the processes of repair in mammalian cells are similar to those described in bacteria and thus it is assumed that these systems have been conserved during the course of evolution. It has been speculated that the primary role of these systems in evolution was to protect the genetic information of the species from both endogenous and naturally occurring exogenous DNA damaging agents, especially long enough for the organism to replicate *(248)*. All species examined thus far possess at least one form of DNA repair *(218)*.

Since the nature of DNA lesions formed by agents which are genetically toxic, and the methods of their repair, are so similar across species, the use of prokaryotes to screen for this particular form of genetic toxicity seems reasonable. However, the greater complexity of the mammalian systems requires that care must be exercised in the interpretation of bacterial data. For example, chromatin structure in mammalian cells appears to make some regions of the DNA more accessible, and others less accessible, to adduct formation and repair *(249- 251)*. Furthermore, significant differences in the repair efficencies between tissues *(252)* and species *(253-263)* have been observed. In terms of general understanding of the significance of these differences, it is known that among the placental mammals there is a good correlation between the maximum achievable lifespan of a species and the ability of primary fibroblast cell cultures from these species to perform unscheduled DNA synthesis following UV exposure *(261,263)*. It is not known whether there is any such relationship for DNA damage induced by chemical electrophiles. Also, in animals, the organization of cells into tissues presents other complicating factors. One example, based on tissue interactions, involves the complex effects of xenobiotic liver metabolism on the activated agent concentrations in other

tissues. Another involves tissues that are less active mitotically than others. The longer cells are given to perform DNA repair prior to DNA replication, the less likely it is that a transformation event will occur *(198,260)*. Still another example may be the maintenance of many cells in stationary phase (G_0 in a tissue. Those cells could be triggered into DNA replication, and run the risk of mutagenesis, by an agent delivered in a dose sufficently high to induce cell killing (see below, section on hyperplasia) *(266)*. Since the latter possibility has been used to explain the apparent threshold effects seen in various long term low-dose vs. high-dose carcinogensis experiments using nitrosamines (by presuming that the high dose induces cell killing and resultant division leading to effects that are only seen with a high dose [in 264]) understanding factors such as these are important in assessing risk. Other complicating whole animal effects include diet, age, and hormonal status, all of which impact on DNA repair *(265-267)*.

Table 3 - Mammalian DNA Repair Mechanisms

1. Nucleotide excision repair - a mechanism that removes bulky, noncoding lesions from the DNA in a manner similar to, but not identical with, bacterial nucleotide excision repair *(167,201- 207)*.
2. Base excision repair - a mechanism that permits reinsertion of the proper base into the gap left in the DNA by the action of enzymes that effect the excision of inappropriate bases from DNA as the free base (DNA glycosylases), avoiding scission of the DNA backbone *(208-209)* as well as a system similar to the bacterial one requiring strand scission *(212-217)*. Included as part of this form of repair, following Setlow *(218)*, are direct demethylation by transfer of a methyl group to an acceptor protein *(219-220)* and AP site repair (direct repair of a removed base) *(209-211,221)*.
3. Strand break repair - the process by which single and double-strand breaks are rejoined with the addition of few or no additional nucleotides through the action of a sealing enzyme *(222-228)*.
4. Photoreactivation - a light activated enzymatic mechanism specific for the breakage of the UV-induced covalent bond attaching two pyrimidines in a cyclobutane-type ring *(228-234)*.
5. Recombination repair (post-replication repair) - a system once believed to occur in mammalian systems, although now controversial, by which bulky, noncoding lesions were transferred to DNA synthesized after damage *(235-238)*.
6. Replication bypass (post-replication repair) - a process that may function in mammalian cells as an alternative to recombination repair in which the bulky lesions are bypassed and the gap created filled *(239-240)*.
7. Inducible DNA repair systems - the most recently described and still speculative (for mammalian systems) repair system in which DNA damage triggers the induction of enzyme systems to remove the damage *(241-247)*.

Many biochemical mechanisms are involved in the repair of DNA damage, and many factors may modify their effectiveness. One mechanism is a nuclear enzyme system which polymerizes activated ADP-ribose residues to form poly(ADP-ribose) *(268)*. The biological function of ADP-ribosylation is not clear, however, there is a relationship between it, DNA damage and DNA repair, which may involve the capacity of the system, demonstrated *in vitro*, to utilize damaged DNA *(269)*. This system also seems to influence the production of sister chromatid exchanges *(270)* and has some relationship to mutagenesis and carcinogenesis, although not a simple one *(269)*. Another mechanism, recently brought to light by the identification of a series of enzymes (collectively referred to as the DNA glycosylases [213-217,271-277]) active in base excision repair (Table 3), has indicated that there is much greater specificity for the various kinds of DNA damage than was previously thought. Over a dozen of these enzymes have been isolated from bacterial and mammalian systems, each involved in the repair of a specific form of DNA damage. The apparent lack of nonspecific DNA damage recognition enzymes in adult mammalian tissues and the high degree of specificity of those repair systems that have been studied suggest that there is specific repair of many forms of DNA damage, including those induced by man-made substances. Another recently discovered mechanism involves an inducible antimutagenesis repair system in bacteria *(278)*. An inducible system, considered part of post-replication repair, was also found in mammalian cells *(242, but see 243)*. Low doses of certain mutagenic agents appear to induce a response in the liver that enhances the repair of damage subsequently induced by those agents. For example, in rat liver, an inducible protein transfers the intact methyl group, added to the guanine base by the potent carcinogen dimethylnitrosamine, from the DNA to a cysteine residue. Pre-stimulation of the animal with small doses of the compound can enhance this inducible repair system by as much as 3-fold *(220)*.

As an example of the relation between knowledge of mechanisms and resolution of science policy questions, one can consider the relationship of DNA repair systems and a threshold phenomena in carcinogenesis. In simple terms, the threshold concept maintains that there is a level of exposure to an agent below which there is either no observable effect and/or no adverse biological effect, usually as a result of some reserve (*e.g., see 279*). The practical manifestation of this concept is a dose-response curve which does not appreciably differ from zero response at some non-zero dose. The concept is used to evaluate many toxic phenomena, but has been a source of controversy in the evaluation of carcinogenicity. The existence of DNA repair systems has been used by some authors to support speculation that a threshold exists for the biological effects of chemical carcinogens, by suggesting that low levels of DNA damage could be totally removed, thereby removing the effects of a low dose of carcinogenic agent. Such an extrapolation is not supported by present data, as is shown below.

The following analysis will concentrate on the question of a threshold for DNA damage and it must clearly be recognized that DNA damage is only one part of a complex chain of events leading to carcinogenesis which may be effected in multiple ways by an agent. A threshold, or lack of threshold, for DNA damage does not necessarily determine a threshold, or lack of threshold, for carcinogenesis.

First, no DNA repair system reduces DNA damage to zero. Consistent with this observation is the observation that DNA damage accumulates in postmitotic tissue, as a function of age even in the absence of known chemical exposure *(281)*. The repair proficient systems found in dividing *Escherichia coli*, when fully induced, can reduce mutagenesis by up to 5,000-fold, but the mutation rate in exposed cultures is still 10 times that which is produced spontaneously *(282)*. The fragmentary data from mammalian cells suggests that there may be an inducible system *(281)*, but it would be unreasonable to assume that replicating eukaryotic cells would be at less risk than prokaryotic cells from low doses of a mutagen. Second, not all DNA repair systems are error-free. While the data on inducible error-prone bypass mechanisms in mammalian systems are meager *(281)*, virus reactivation, which is likened to a mutagenic effect, has been well established in eukaryotes *(244,281)*. This suggests that mammalian cells also possess an error-prone bypass system. Third, major variations in DNA repair efficiency occur between cells, tissues, strains and species exposed to similar doses of the same carcinogen *(253-267)*.

This heterogeneity limits generalizations about the effectiveness of repair systems, constitutive or inducible, relative to the completeness of repair or the notion of a "safe" threshold. Tissue differences in repair might result in a dose-response relationship indicating a threshold for repair in one tissue, but a relationship indicating no threshold for repair in another, thereby providing little hope for uniform protection within an organism. In tissue or cell culture, repair appears to vary between cells. Thus, even if biochemical analyses, which normally measure the average repair capacity of a heterogenous population of cells, demonstrate that a tissue or cell culture is repair proficient, the possibility of repair deficient subpopulations cannot be disregarded.

It is clear that DNA repair will not produce a threshold for DNA damage. However, it is not clear what the significance is of the DNA damage which results from exposure to exogenous agents. Since some damage results from normal metabolism and, probably, exposure to chemicals in foodstuffs *(32)* over the life of the animal, the importance of the additional burden induced by a carcinogen above this background is hard to determine. As noted above, since DNA damage is only a part of the complex process leading to the production of cancer, this determination probably can only be made when a clear understanding of the mechanism(s) of carcinogenesis is achieved.

B. Fidelity/Infidelity of DNA Replication

Another modulator of the alteration of genetic information is the fidelity of DNA replication. Although it is not proven that the role of DNA replication in initiation is to stabilize incorporation of the effects of DNA damage in the genome ("fixation") *(282)*, it remains the most attractive possibility. The fidelity of DNA replication *(283)* will help determine the integrity of genetic information in the initiated cell.

Before one considers the ways fidelity can be altered, it is important to understand the consequences of error accumulation in DNA in nondividing somatic cells *(248)*. In dividing cells, one is concerned with replicative error propagation; that is, the transmission of mistakes from one generation to the next. Mechanisms that enhance the frequency of such mistakes could involve alterations in the DNA synthetic apparatus and have been referred to as intrinsic mutagenesis *(284)*. In nondividing cells, one is concerned about the effect of accumulated unrepaired DNA damage on cell function. When considering mechanisms in carcinogenesis, attention is normally limited to either dividing cells or to resting cells destined to undergo at least one further division cycle. With our present understanding, a cell which fails to undergo further division is not usually considered pivotal with respect to neoplasia. However, if amitotic cells become, through some mechanism, able to divide, or if nondividing cells are involved in the control of dividing cell populations, the accumulation of damage in them can be significant. For instance, nondividing neurons control the level of thyroxine, and it has been shown that this hormone is an important factor in X-ray transformation of cells *(285)*. Therefore, although usually not appreciated, the effects of agents on nondividing cells should not be ignored.

In dividing cells, a repaired or inadequately repaired DNA lesion, such as an adduct, when present on the DNA template at the time of replication, could result in a genetic alteration, *e.g.* base substitution, such as replacing a guanine with a cytosine. However, damaged DNA need not always cause significant base substitutions during DNA replication. First, parental cells containing the damaged DNA may fail to divide and thus be progressively diluted during cellular proliferation. Second, due to the redundancy of the genetic code, as well as other factors, approximately 25% of incorrect base substitutions may not result in amino acid substitutions. On the other hand, a number of modifications of the DNA template or of the DNA polymerases have been shown to cause incorrect substitutions during copying by DNA polymerases *in vitro (286-287)*. If these modifications are not corrected by subsequent DNA repair, it is a reasonable expectation that the unrepaired lesions will in time result in either mutations or cessation of cell reproduction *(262)*. Alkylating agents and carcinogens have been shown to induce misincorporation *in vitro* by modification of DNA templates and by removal of purines from the DNA *(288-293)*. Also, the induction of an error-prone repair pathway (SOS) may cause problems since the underlying concept of this repair pathway is that it can alleviate potentially lethal damage only at the expense of inducing mutations *(278)*.

Even if the template is undamaged, other factors which can be altered by carcinogens, both directly and/or indirectly, may cause the template to be copied incorrectly. Table 4 lists some factors that have been found to diminish the fidelity of DNA synthesis *in vitro* in two different systems, *(288)* and may have to be considered *in vivo*.

During replication, the fidelity of DNA synthesis is altered by certain changes in the reaction conditions. The error rate of mammalian DNA polymerases *in vitro* has been shown to be dependent on the ratio of correct to incorrect nucleotides with both polynucleotide and natural DNA templates *(294-295)*. There is evidence that alterations in cellular nucleotide pool sizes and content are mutagenic *(296-298)*, and the cellular homeostatic mechanisms for precise maintenance of deoxyribonucleotide concentrations may be altered by various chemicals. Furthermore, agents may directly alter some of the nucleotides in the pools available for replication, leading to possible misincorporation *(299-300)*.

Table 4 - Changing Reaction Conditions That Diminish the Fidelity of DNA Synthesis

1. Ratio of incorrect to correct nucleotide substrates (294-300).
2. Type of incorrect nucleotide substrates (296-300).
3. Different metal activators for DNA polymerase (288,291,295).
4. Nonactivating metal mutagens and/or carcinogens (288).
5. Depurination of template (293).

Lindahl and Nyberg *(301)* estimated that the *in vivo* rate constant for thermal depurination is approximately 3×10^{-11} sec-1 suggesting that as many as 10,000 purines may be lost from the genome of a mammalian cell per generation time (20 hours). Furthermore, this rate constant may be significantly increased after alteration of bases by alkylating agents *(301)*. The intensity of this formation of damage suggests that during replication, the cellular mechanisms for correcting depurinated sites on DNA might not be able to repair every site before the polymerase complex involved in replication encounters a damage site. Thus, replication over a damaged site may be a secondary result of cellular interaction with a carcinogen. Lastly, mutagenic/carcinogenic metals can affect the fidelity of DNA synthesis *in vitro (288)*. Thus, various agents that do not damage DNA directly or enhance the production of metabolites that can induce such damage may exert their effect by altering the fidelity of DNA replication. Methods to assess or screen for such agents in mammalian cells are generally lacking. The end result of these processes is that a daughter cell can have an irreversible alteration in genetic information *(282)* even though the cell which interacts directly with the agent does not. This altered cell may be

similar to normal cells in many respects, but may be capable of giving rise to a cancer, *i.e.* be initiated, and may lead to carcinogenesis if, during the life span of the animal, it encounters an appropriate stimulus.

As previously noted, it is not clear what role DNA synthesis has in initiation, although it has been shown that manipulation of the rate of cellular proliferation can modify tumor incidence. This has been demonstrated: 1) in partial hepatectomy for animals treated with methylnitrosourea, dimethylnitrosamine *(282)*, benzo(a)pyrene and radioactive particles that localize in the liver *(302)*; 2) with chemical treatment combined with diet changes, drugs or natural physiological agents such as hormones or bile acids which alter proliferation rates *(282)* (*e.g.*, retinoids, which stabilize the differentiated nondividing state of epithelial cells among their other biological effects, have been used to inhibit mammary and colon carcinogenesis [303,304]); and 3) in stimulated hyperplasia resulting from a toxic effect *(305)*; and 4) regeneration in skin using skin abrasion *(306)* (much of these data are hard to evaluate, however, because the treatments induce a chronic inflammatory response and it is not clear whether one is studying the effects of proliferation or the inflammatory response).

Cytotoxicity could be a stimulus for cellular proliferation which may result in hyperplasia *(307)* (usually termed restorative or reactive hyperplasia). A chemical which may work through such a mechanism is carbon tetrachloride, which is carcinogenic in mice but which has little or no activity in tests which measure alteration of the genome (the compound was positive in yeast, but only at doses which were almost lethal, casting doubt on the relevance of the result) *(308)*. Replication may act to "fix" changes in cells previously "primed" by some unknown stimulus or it may result in replication errors through some of the mechanisms suggested above. The possibility that hyperplasia can lead to carcinogenesis has led to the speculation that a cytotoxic mechanism is of primary importance in the carcinogenic effect of all carcinogens which do not appear to act directly on the DNA that are tested at a high dose *(309)*, with a suggestion that a dose which does not lead to cytotoxicity would have no toxic effect. This hypothesis overlooks the obvious problem that cytotoxicity is by no means the only way an agent which does not appear to act directly on DNA can alter either replication or gene expression. Certain compounds can stimulate hyperplasia without significant cytotoxicity *(310)*. Furthermore, it has been shown many times that neither the induced hyperplasia *(311)* nor the irritant properties resulting from promoters, such as PMA *(312)*, are sufficent to explain the promotion effect. Thus, a cytotoxic action should be considered simply as an additional possible mechanism of carcinogenesis and not equated to an explanation for carcinogenesis for all non-directly acting agents tested at high dose.

Whatever mechanism(s) is (are) important in the formation of initiated cells, it is clear that cells irreversibly altered in a heritable fashion are induced during this process and that these are the progenitors of further new cell populations during the carcinogenic process. The properties of these cell populations are discussed in the next section.

VI. CANCER FORMATION

How initiated cells with altered genetic information result in a cancer seems to be the least understood area of carcinogenesis. The process can be divided into two operational stages, promotion and progression. Promotion will be used to describe the process(es), usually initially reversible in test systems, but later irreversible *(313)*, that results in cellular proliferation and terminates when one or more neoplastic cells, *i.e.* cells with the ability to grow autonomously, is (are) formed. Neoplastic progression will refer to the next step(s) in which cells become able to form tumors and become malignant with some potential to metastasize.

A. Promotion

1. Promoter Action. A promoter is experimentally defined as an agent which results in an increase in cancer induction after long-term application subsequent to treatment of an animal with an initiator. Under otherwise identical conditions, neither initiator nor promoter alone induces many tumors, nor does a regimen with reversed order (treatment with promoter followed by an initiator) *(311)*. At a particular dose level and treatment schedule, a carcinogen that does not require supplemental promoter activity is termed complete. Many or all complete carcinogens act as both an initiator and promoter in their interaction with the organism and some act as initiator or promoter for different tissues in the same organism at the same time *(314,315)*. Also, the promoter action of a complete carcinogen may not act by the same mechanism as promoters used in initiator-promoter paradigms *(312)*. Separation of these two aspects of carcinogenic action is frequently difficult. However, the term remains a convenient description for one part of an experimentally isolated complex process. For the most part, the phenomenon of tumor promotion has been most carefully delineated in skin and liver carcinogenesis. It remains to be established more firmly with cancer at other sites though there is suggestive work in colon, breast, kidney, central nervous system *(282)* and bladder *(310,316)* carcinogenesis. At present, given the lack of information on mechanisms of carcinogenesis in humans and the myriad interactions of tissue and the biological effects of promoters demonstrated in experimental systems, it is premature to designate agents as acting through only a promotion-type mechanism, although a number of agents seem to have some promoter action.

This experimental definition will not clearly differentiate between promotion and progression since it measures only the production of a malignant tumor. In practice, however, laboratory studies of promoter action are usually ended after a focal mass of cells (*e.g.*, papilloma, nodule) is observed *(310)*. The appearance of the first neoplastic cells has been proposed as a definition of the end of promotion *(282)*. This definition is useful since it emphasizes the frequently seen reversible effects of promotion, *i.e.*, regression of the direct results of a promoter (*e.g.*, papilloma) with termination of its use, while clearly indicating that the role a promoter has in carcinogenesis is to induce a presumably irreversible event, a neoplastic cell. A similar definition is suggested by the separation of promotion into two stages, based on work in skin promotion in mouse *(313)*. Stage one is partially reversible, while stage two, which requires cell proliferation, is initially reversible and then becomes irreversible. When induced, many of the focal masses are reversible, especially in skin and liver *(282)*. How these non-neoplastic masses originate is not completely known, but they seem to arise through the differential stimulation of cells altered by the initiator to respond to the promoter *(282)*. Of the persistent masses, in all systems in which they are induced, almost all do not become neoplastic *(195)*.

Promoters are usually thought of as exogenous compounds. Many of them are plant products (310,317) such as certain of the phorbol esters *(e.g.*, 12-O-tetradecanoylphorbol-13-acetate [TPA]

or phorbol tetradeconate acetate [see Section IV.A.1], which is also known as phorbol myristate acetate [PMA]). However, there is also evidence that certain compounds normally present in the body (endogenous) may also be promoters *(318,319)*. Promotion by such endogenous compounds may be difficult to demonstrate since production of the compound in the body must usually be altered (which normally has many physiological ramifications) to observe an effect, as opposed to exogenous compounds, whose levels are controlled by direct application to a tissue. Another type of interaction that seems to have promoter action occurs in foreign body tumorigenesis *(196)*. Although it has been claimed that a single event determines the sarcoma which results from the implantation *(182)*, it is clear that there is a step where preneoplastic cells of probable vascular origin (produced in a surface-contact independent step) require a surface-contact dependent step to become neoplastic *(182)*. Like other promoters, removal of a foreign body before the last step will, as a rule, prevent the sarcoma from developing. Thus some surfaces, as well as exogenous and endogenous compounds, seem to be able to act as promoters.

Despite recent significant progress, the mechanism of action of PMA, the model promoter, is not completely clear. There is good evidence PMA binds to a receptor *(320,321)*, that activates protein kinase C *(100,322)* (or that may activate the kinase permanently through similarity to diacylglycerol [97]) similar to a number of growth factors (see section IV. A. 1. a). Other promoters also interact with a cell receptor *(310,323)*, *e.g.*, estrogens, suggested to be promoters of mammary and liver tumorigenesis *(324)*, are known to produce their main biological actions through receptors *(325)*.

PMA produces profound biological effects *in vivo*, including edema, erythema, inflammation and cellular proliferation (a property which allows the promoter to participate in "fixation" if given within a short enough time after the initiator dose). But these same effects can be produced by agents that are not promoters *(310)*. By stimulating specific separate effects of PMA in other ways, one can define at least two stages in promotion *(313,326,327)*, supporting the hypotheses that cancer is a multistep process and that more than one aspect of PMA may be important in promotion. *In vitro*, promoters have been shown to induce an array of diverse morphological and biochemical changes *(310, 324,328)*. An important one may be the interaction of PMA and other promoters with cells to generate free radicals *(329-331)*. A similar stimulation is seen with the use of either ionizing radiation or activated oxygen *(331)*, agents which damage the DNA. The capacity to stimulate radicals seems to be correlated with promoter potency to generate tumors *(329)* and varies in a dose dependent manner for the strong promoter PMA *(331)*. PMA can also: 1) cause dedifferentiation or inhibit terminal differentiation *(333)*; 2) stimulate cellular differentiation *(334)*; 3) alter macrophages *(335)*; 4) induce chromosomal alterations *(336)* and sister chromatid exchanges (SCE) *(337)*; and 5) induce virus synthesis *(338)*. It is not known which, if any, of these effects are central to the role of promoters in carcinogenesis since evidence for all models of promotion is indirect. However, the effects on chromosomes may be especially relevant.

PMA can induce chromosomal anomalies such as SCE, although the concentrations (100 ng/ml) required for this effect are quite high *(337)*. The activated oxygen species produced by the promoters, perhaps through an interaction with membrane components, can induce chromosomal damage and a soluble substance which induces chromosomal abnormalities (a clastogen) in nearby cells *(336)*. However, the promotional effects of PMA are reversible unless it is given for a fairly long time while a chromosomal change, such as an aberration, is almost certainly not reversible. This suggests that a chromosomal alteration could be an event, induced by prolonged exposure to the promoter, which terminates the reversible period in promotion *(190,311)*. This suggestion is consistent with the observation that papillomas, which emerge in a common response to promoter action in skin carcinogenesis during the stage when it is reversible, are primarily associated with a diploid karyotype whereas malignant tumors usually have karyotypic alterations *(339, 340)*. The selection process for cellular characteristics important to neoplasia may occur during the entire promotion process (indeed selection may be important even during initiation [282]). Also, the need for prolonged exposure, leading to a relatively large cumulated dose, may be why such high doses have to be given to observe the effect in short-term experiments *in vitro*.

Chromosomal changes, although not proven to be responsible for growth independence of neoplastic cells, are implicated in transformation (341).

For example, SK-L7 human lymphoid cells markedly increase their cloning efficiency in soft agar and decrease their doubling time from 30 hours to 14 hours upon introduction of an additional chromosome 15 *(342-344)*. More directly, a clastogenic effect is produced by cells from an individual with Bloom's syndrome, a clinical entity in which there is usually a high cancer incidence *(336)*. Specific chromosomal transpositions, as seen in the case of Burkitt's lymphoma (see this chapter, Section IV.A.1.b), can be associated with changes in the regulation of gene expression and also could be associated with phenotypic changes such as differences in antigenic expression and unresponsiveness to regulators of cell growth (it must be remembered, however, that this analysis is drawing general conclusions about malignancy from the pathogenesis of rare diseases in persons with a limited lifespan, which may not be appropriate).

The hypothesis that a chromosomal change is a causal factor in cancer induced by promoters is attractive, especially when viewed with the evidence concerning the effects of transposition in oncogenes (see Section IV.A.1); however, few data directly support this contention *(198)*. Although there is a lack of methods to measure such changes readily in vertebrates, this hypothesis is interesting since such genetic alterations: 1) are much more drastic than localized changes in base sequences; 2) may be either site-specific or non-site-specific; 3) do occur at different frequencies; 4) appear to affect the stability of neighboring genes; and 5) are virtually irreversible. In rapidly multiplying bacterial cells, conventional mutagens do not enhance the frequency of transposition *(345)*; however, factors that trigger transpositions or govern their rate of movement are not yet understood well enough to determine whether mutagens enhance transposition in mammalian cells *in vivo*. Large-scale changes, such as rearrangements and deletions, rather than the small changes repairable by excision repair that can be detected in the usual tests for mutagenicity may be more important to predicting human cancer *(196)*. It appears that localized lesions in DNA can be carcinogenic *(54,346)*, it is not clear whether such lesions might act either independently or through induction of direct or indirect induction of major genetic alterations or through a combination of both factors *(347)*.

Evidence is starting to accumulate that both oncogene activation and treatment by some promoters have some

aspects in common, *i.e.* the activation of some growth factor-like stimulus. Interesting in this regard is the discovery that metallothionein gene induction by heavy metal ions (such as cadmium) and glucocorticoid receptors both work by activation of "enhancer-like" elements, which leads to the speculation that the direct interaction of certain metal complexes with DNA may have effects similar to hormone or growth-factor induction for gene expression. In some cases, the primary stimulus seems to need some second factor, another oncogene involving a nuclear protein in the case of oncogenes, or Phase II promoters, involving replication, to cause transformation. In this light, chromosomal changes might be seen as merely a possible, but not obligatory, method to accomplish the same end, with the final chromosomal change equivalent to the second oncogene activation or the effect of proliferation and other changes in the case of the PMA stimulation.

Cancers in humans from causes such as exposure to cigarette smoke or exposure to benzidine in the workplace have a very long latent period. It is not clear whether this long period is the time from exposure to the production of a neoplastic cell (promotion) or the time necessary to go from a neoplastic cell to a malignant tumor (progression). Evidence that the carcinogenic risk of cigarette smoking declines with the length of time after smoking stops *(349)*, suggests that most of the latent period is partially "reversible" and therefore probably occupied by a phenomenon similar to promotion.

This is also suggested by a recent model for the development of Burkitt's lymphoma, which seems to be a virally produced cancer *(350)*. According to this model: a) a lymphoma clone develops in one or more steps from B lymphocytes that have acquired neoplastic characteristics due to EBV transformation; and b) the fully malignant phenotype occurs only when the lymphoblastoid cells acquire a specific chromosomal translocation that involves the immunoglobin locus. The long latency period seen in the disease has been suggested to arise from the need for a promoter-like stimulus that may cause proliferation and interfere with the differentiation of the long-lived initiated B cells *(340)*.

Since neither initiator nor promoter alone is sufficient to cause tumors and since promotion appears to be involved in the carcinogenic process, especially in time to tumor induction, low-level exposure to certain carcinogens may only become significant after subsequent exposure to promoters. This bears on the question of a threshold for tumor promoters. Although it has been stated that promoters have a threshold *(309)*, there is little good evidence for this. Studies of the dose-response curves for promoters (*e.g.* PMA [351]) have clearly been inadequate for the purpose of defining a threshold, as is usually acknowledged by the authors involved. Also, there is a question of interpretation. For instance, recent work has shown that bladder stone formation by high doses of melamine is correlated to the carcinogenic effect of this agent in rats *(352)* (the significance of this observation for carcinogenesis has been brought into question by the discovery that mice, with similar propensity to develop stones, and induce tumorigenesis by bladder implantation, have little melamine-induced bladder cancer), and this has been taken by some authors as indicating a threshold for "promotion". Alternatively, the dose used in the assay can be considered to have induced a significant pathological effect (other than tumorigenesis) that was important in generating the cancer seen. Similar considerations are appropriate for agents which induce other functional pathological effects only in high dose, *e.g.*, immunosuppression. It must be remembered, though, that agents which induce these pathological effects may have other actions (*e.g.*, azathioprine is mutagenic as well as immunosuppressive [308]), which could contribute to carcinogenesis at lower doses. Also, it must be kept in mind that the tendency to induce a pathological effect may vary with the well documented variations in individual human response to agents. Important factors in tumor promotion such as dose, dosing schedule, tissue specificity, interaction with initiating stimulus, etc., create substantial uncertainty about any general statements regarding thresholds.

Generally, animal bioassay studies, because of their design and the conditions under which they are conducted, fail to distinguish between initiating or promoting activity or between a direct or indirect action by the agent on the genome. Although it may be useful to group compounds with some criteria: *e.g.*, mutagenic, or having a particular biological effect in a particular strain, one should be careful about implying that something is known about the mechanism of action. The grouping, since it is not based on knowledge of carcinogenic mechanism *in vivo*, may have no relationship to the multiple routes by which carcinogenesis could be induced in a particular instance *(353)*. It is difficult to be clear about what is the target of a particular agent when the mechanism of effect of any agent is still unknown. However, it is still important to define the kinds of promoters and to examine the patterns of exposure to them to help elucidate mechanism.

2. Specificity/antipromotion. Tumor promoters often display tissue specificity, having primary effects on only one or a limited number of tissues in a particular species. For example, estrogens seem to be promoters in breast *(318)* and liver *(319)* in animal models. Mouse skin and bladder are also specifically responsive to certain promoters *(310)*. An interesting sidelight to this aspect of promotion is that the PDGF-like material stimulated by the *sis* oncogene is active specifically for the tissue which develops the sarcoma produced by the virus *(101)*. Since some promoters seem to be simulating growth factors, and many growth factors tend to be fairly tissue specific, this may be an important source for the tissue-specificity seen.

The potential for any tissue to give rise to a tumor after initiation may be partly determined by inherent biological processes; treatment to prevent disease may be designed to interfere with those processes, especially with endogenous tumor promotion. Such inherent processes may be altered by diet, stress, or other conditions such as individual genetic differences or altering physiological function. For example, a number of experimental animal studies suggest that a high fat diet can promote carcinogenesis in breast and colon, while epidemiological studies show a positive relationship between dietary fat and breast cancer in some populations *(354)*. However, to confirm that a low fat diet will decrease these types of cancer *(12)*, additional studies need to be conducted in countries with a wide genetic diversity where a high proportion of the population's caloric intake comes from fats. It must be kept in mind that the total carcinogenic response should be considered. For instance, there are certain populations, with certain life styles and diets, such as the Japanese, which have a low incidence of one cancer, such as colon cancer, when compared with other cultures (*e.g.*, Americans). However, they frequently have a high incidence of some other type of cancer, such as stomach cancer, which has a low incidence in other populations *(2)*.

Studies have also revealed several compounds, called antipromoters, that inhibit responses to PMA *in vitro (147)* and prevent tumor promotion *in vivo*

(355). Antipromoters are effective during different phases of the multistep process of promotion. Although "pure" promotion has not been conclusively demonstrated in humans, the existence of antipromoters in other systems has been used to suggest that it may be possible to design cancer prevention methodology based on the interference of promotion with a putative antipromoter in humans. Clinical studies are currently underway to test the therapeutic efficacy of some antipromoters (*e.g.*, synthetic retinoids [356]).

While cell culture methods offer possibilities for screening for tumor promoters and antipromoters, it will first be necessary to determine which functions altered *in vitro* by promoters are critical to the promotion process and which are secondary. The species and tissue specificity of tumor promoters make it likely that a number of different cell types will be required for any screening procedure.

B. Neoplastic Progression

The progression of a neoplastic cell into a malignant tumor, which does not occur to every neoplastic cell, is the last major stage of cancer formation and is probably accomplished through a number of steps. Many cancers have more than the normal numbers of chromosomes and exhibit poorly controlled and sometimes higher rates of growth, invasiveness and anaerobic glycolysis, factors that may be important to their survival in the animal.

The route by which a neoplastic cell becomes a cancer may entail a sequence of interactions between tumor cells and both specific and non-specific host defenses *(357)*, as well as a series of events that result in the cell acquiring more of the characteristics of cells in a malignant neoplasm *(282)*. These selection processes are non-exclusive of each other and may involve karyotypic changes *(358)*. The factors that are important in neoplastic progression, especially in the pre-malignant stage after neoplastic cells emerge and before a malignant neoplasm is formed, may be similar to those in tumor dormancy, a phenomenon in which tumor cells reappear many years after apparently successful treatment. The major mechanisms of tumor dormancy seem to be: 1) inhibition of cell division; and 2) cell division accompanied by cell lysis. Mitotic control can be exercised by macrophages *(359)*, soluble factors such as lymphokines *(360)* and interferon *(361)*, nutrient depletion *(362)*, or a hormonal requirement for growth *(363)*. Continuing cell division in a tumor, the major characteristic of a neoplasm, can continue without much effect if daughter cells are lysed about as fast as they are produced. This can result from immunological lysis, nutritional deprivation or very slow tumor cell production. Any or all these factors may lose their effectiveness during the selection processes for malignancy described above, perhaps in a number of steps.

An interesting model for the mechanism of progression of a neoplasm to malignancy is the one proposed by Gersten, Fidler and Hart *(359,364)*. After a primary tumor is established, there is tumor vascularization, by an angiogenic factor *(362)*, with invasion of surrounding tissue and blood vessels. This invasion seems to be accomplished through tissue damage by a number of different enzymes, such as collagenase *(360)* and cathepsin B *(361)*, although the role of tumor cell motility is not clear *(364)*. The widespread dissemination of cancer cells occurs by the lymphatic (carcinomas) and hematogenous (mesenchymal tumors) routes. During lymphatic spread, the regional lymph node is involved in the host immune responses to neoplasia *(367)*. During hematogenous spread, release of tumor emboli in the bloodstream results in most tumor cells being destroyed by interaction with a number of blood elements *(368)*. However, the more that are released, the greater chance of survival to form metastases. Arrest and subsequent growth of circulating tumor cells or implantation in another site seem to be a function of tissue and metastasis, and there are some data that the site is selected by the membrane properties of the metastatic cells *(369)*. Metastatic cells then leave the blood vessel and form micrometastases which induce blood vessel proliferation leading to metastatic growth *(364)*.

Progression seems to be modulated by a number of factors. Important among these is the immunological system. Many tumors induced by physical and chemical agents are antigenically distinct *(370-372)*. To overcome the immunological defenses of an immunocompetent individual, the tumor could: 1) simply not be immunogenic, *e.g.*, contain only antigens expressed normally in the body; or 2) suppress the immunological response. Lack of immunogenicity seems to be very common in spontaneous tumors in animals *(372-373)*. This also seems to be the case for humans since, at present, only cells from presumably viral induced tumors, such as Burkitt's lymphoma *(374)*, may be considered to be truly immunogenic (although there is evidence of some specific antigens associated with cells from human tumors grown in culture [*e.g.*, colorectal tumor cells] [375]) *(376)*. A tumor could also induce immunodeficiency, either general or selective. Immunosuppression could be accomplished by a variety of mechanisms, including production of circulating immune complexes *(377)* (to inhibit antibody response) or a rise in suppressor T-cells *(378)* (to inhibit T-cell response). Production of an immunodeficiency seems to be important for highly immunogenic tumors, such as UV induced tumors (which are decisively affected by suppressor T-cells in the formation of primary tumors [378]) and viral tumors (which are profoundly influenced by immunocompetence [138,379]). The immunodeficiency associated with UV-induced tumors is a selective one, perhaps because of a UV-induced deficit in antigen processing by a macrophage-like cell that subsequently produces the T-cell response *(378)*.

Clinically, the term "immunodeficiency" usually refers to a more general type of immunodeficiency that can occur during the later stages of carcinogenesis *(380)*. This may be of importance mainly in metastasis since it has been shown that immunosuppressive treatments and agents greatly increase the incidence of distant metastases in rats with highly immunogenic tumors (though the effect is reversed for tumors with low immunogenicity [381]). Its role may be wider, however, since it has been suggested, from evidence about lymphoma in immunosuppressed individuals, that the immune system may be important in the selection of a particular chromosomal alteration, *i.e.* may be involved in promotion *(138)*.

Implicit in this analysis is the fact that factors that can alter modulators of progression can also alter progression. For example, factors such as stress that result in a mild immunodeficiency, may also mimic the effects of immunosuppression in production of lymphoma. A cancer is a product of a long series of events and it is a reasonable assumption that modulators may interact in a positive or negative fashion with this sequence at any point.

An interesting approach to this complex problem was the development of a general model for the temporal development of tumors, rooted in evolutionary theory. Based upon the observation of tumor heterogeneity, even when derived from a single clone, the "shifting balance" theory, which emphasizes that many genes, with multiple pleiotropic effects mediate the

expression of tumor genotype, was applied to tumor evolution *(382)*. This "micro-evolution" maintains the flexibility for rapid population adjustment to conditions because of a wide variety of phenotypes. "Macro-evolution" occurs when a new niche is available, after survival of a "catastrophe" for the cancer cells (resulting from clinical treatment or immunological attack), or when a new adaptive level emerges from previous "micro-evolutionary" changes. The implications of this theory are intriguing, and suggest that cancer prevention may be more effective than cure.

VII. MULTIPLE AGENTS

Since people are exposed to many different agents at the different times in different sequences, the effect of multiple agents on carcinogenesis is of major concern. However there is little information of general import in the field. Models for interaction are generally limited by lack of information on dose-response curves for carcinogens in the area of interest *(383)*. The great number of permutations of possible agents and doses makes understanding interaction of multiple agents very difficult.

In general, the action of two or more agents can be additive (if the agents are given in a dose range where the biological response is a linear function of dose) or multiplicative (if the response is a simple exponential response to dose), synergistic (greater than expected) or antagonistic (less than expected) *(383,384)*.

One obvious example of synergism is the tumor initiator-promoter interaction described above. Tumor incidence is much less when either agent is given separately than when the two agents are given in the proper order. Another possible example is the relation between cigarette smoking and asbestos exposure in carcinogenesis. The effect of both carcinogens is much greater than a simple additive model would predict and is closer to multiplicative *(385)*. Although the mechanism for this phenomenon is not known, possibilities include: 1) asbestos increases the uptake of the carcinogenic substances in cigarette smoke (as shown when benzo(a)pyrene is used as a model compound [386]); 2) asbestos stimulates metabolism of carcinogen(s) in smoke (which has been shown for benzo(a)pyrene, one component of smoke) *(387)*; 3) asbestos works as a promoter with cigarette smoking the initiator *(388)*; or 4) some combination of the above mechanisms *(389)*.

One example of antagonism is the interaction of 3'-methyl-4-dimethylamino-azobenzene (an azo dye) and certain polycyclic aromatic hydrocarbons (PAH), such as 3-methylcholanthrene (MCA) *(390-391)*. Some carcinogenic PAH, by stimulating metabolism, inhibit azo dye carcinogenesis. Although the study and understanding of the interaction(s) of multiple agents is not easy, it becomes much more difficult (conceptually as well as experimentally) when it is not clear whether more than one agent is involved. An example is the interaction of immunosuppressive agents and EBV. Although immunosuppressive agents are presumed not to induce tumors, their use may allow the expression of EBV-induced carcinogenesis, as has been suggested for renal transplant patients who have a substantially raised incidence of tumors, especially lymphomas *(138)*. Since EBV is ubiquitous, exposure to an immunosuppressive might result in an increased number of tumors in a bioassay (*i.e.*, be carcinogenic) although in fact it is simply allowing expression of tumors that arise from a viral infection. Other agents may alter the modulators at any stage in carcinogenesis and result in either more intense effects of a ubiquitous agent or the expression of a tumor derived from long-lived irreversibly initiated cells.

These examples illustrate just a few of the possibilities of interaction. Some agents may stimulate metabolism, interact chemically with other agents, or be so cytotoxic that tumors induced by another agent are killed. Other agents may alter modulators of different stages of carcinogenesis or stimulate the expression of tumors that would normally not be expressed in the lifetime of the animal. At present, in the absence of a well established and comprehensive theory of carcinogenesis, the complex interaction of agents is best understood by elucidating the action of each compound. Then the effects of each compound on the organism can be evaluated and their interaction estimated.

VIII. SUMMARY

Although the study of the phenomenology of cancer was initiated many years ago, analysis of the mechanisms involved in carcinogenesis was started much more recently, and the level of activity has risen significantly in the last decade. This review has attempted to place much of the data concerning cancer into a broad perspective. Exposure to a carcinogen begins at the interface of an animal with its environment, and an agent can be modified by factors associated with an organism at that interface. An example of this is the reduction of benzidine-based azo dyes to carcinogenic benzidine by gastrointestinal microflora. Since the microflora can vary with species as well as with food habits, this provides one source of variation in the activation of agents.

There is a wide variety of processes that are involved in the activation and detoxification of most agents. The complexity of these processes is illustrated by the major products of the metabolism of benzo(a)pyrene, a carcinogen which needs activation. Life style, exogenous agents, diet, age, etc. can act on several levels to alter the balance of activation and deactivation. Examples of this are the stimulation of cellular metabolism producing more reactive species, the inhibition of a particular pathway resulting in a smaller amount of reactive moiety, and the alteration of cell scavengers that absorb reactive metabolites produced by metabolism, and lower the overall concentration of reactive moiety. Activation and deactivation are functions of species, tissue, and even individuals, providing another source of variation in response to a carcinogen.

The interactions of carcinogens with DNA, which seem to be important for the carcinogenic action of many initiators and complete carcinogens, vary across the different classes of carcinogens. Biological carcinogens, such as the acute transforming retroviruses, seem to insert genetic information which allows the expression of certain cellular *onc* genes whose products are important for transformation. Some of these products seem to have effects like certain growth factors. The discovery that the dominant transforming genes of certain human cancer-derived cells are similar to certain classes of *onc* genes derived from the acute transforming retroviruses has been a breakthrough in understanding certain causal factors in human neoplasia. Radiations damage DNA, but, with the exception of ultraviolet-light (UV) irradiation, the irradiation products are not very well characterized and the role of the damage is not clear. It has been shown that a particular DNA damage is involved in the carcinogenic action of UV light, but how this occurs is also not clear. The specific damage that many chemical carcinogens produce in DNA is much better characterized, but which lesions are important in carcinogenesis and how a lesion can interact to produce a cancer are not known. "Physical"

carcinogens include a number of very different agents and processes which seem to have in common the production of a chronic fibrotic reaction.

Two modulators of DNA damage are DNA repair and fidelity of replication, which help to determine the effects of a carcinogenic stimulus that survives through replication in initiated cells. Recent work on DNA repair has suggested the importance of the ADP-ribosylation system and has determined that there is a set of enzymes, the DNA glycosylases, that confer specificity in base excision repair for different types of DNA damage. Also, post-replication repair has been found to be more complex than thought previously, which may help explain how a specific lesion influences DNA. Since DNA repair is modified by many factors, and is tissue and species specific, this provides another source of variation in the final response of the organism to a carcinogen. An example of how knowledge about mechanisms impacts on risk assessment is the question of how DNA repair is related to biological thresholds for effects of carcinogens. Statements that DNA repair results in a threshold for carcinogenesis cannot be substantiated.

The fidelity of DNA replication can be altered by a damaged template or, more indirectly, through changes in the reaction conditions that result in miscoding. Any of the reaction conditions could be altered by a carcinogen or by a change in physiological state induced by a carcinogen, providing a route by which the DNA could be altered without the formation of direct binding between the DNA and a carcinogen derivative.

Cancer is a phenomenon with many steps. In an experimental paradigm, two major stages can be demonstrated: initiation, the induction of an irreversible alteration of genetic information, and promotion, a reversible process terminated by the final irreversible alteration of initiated cells into neoplastic cells. Each stage can be subdivided. The progression of neoplastic cells into a cancer, which has not been easy to separate experimentally from promotion, is the final stage in carcinogenesis.

Promotion can occur with both exogenous and endogenous compounds (and, perhaps, certain surfaces) and is characterized in a number of systems by a focal proliferation of cells of which a small fraction will persist after the promoter stimulus is removed. Few focal proliferations in any experimental system will become neoplastic. Although the aspect of tumor promotion which is critical for tumorigenesis is not entirely clear, an interesting possibility is the induction of chromosomal alterations. The relationship of this process to viral carcinogenesis and the mechanisms by which alterations may lead to a neoplasm are explored. However, a causal relationship of chromosomal changes to carcinogenesis has not been proven. Tumor promoters are tissue and species specific, perhaps providing some insights into how various tissues and species are differentially affected by carcinogens.

Neoplastic progression, the process in which a neoplastic cell becomes a malignant tumor, seems to involve several steps, none of which is yet well understood. In that complex process, the role of the immunological system as one of the important modulators of progression is discussed. An interesting recent approach has been to consider the progression of tumors from an evolutionary, ecological point of view.

Evaluation of the effect of a number of agents acting concurrently has barely begun. Models for summation, potentiation, or inhibition of effects are poorly developed, especially when considering the range of effects that agents have on a number of metabolic and physiological endpoints. Variation with species, tissue and individual at every stage in carcinogenesis produces the added uncertainty if two or more compounds interact at many levels.

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CHAPTER 2 - Short-Term Tests for Potential Carcinogens

I. INTRODUCTION

Cancer can be induced by a variety of radiations, biological, "physical" and chemical agents, and is manifested in a variety of phenotypes. Notwithstanding our lack of understanding of the mechanisms by which cancer is induced and expressed (see Chapter 1 of this document) there is an urgent need to identify the agents that cause and promote these diseases. The rapid identification of potential chemical carcinogens is one of the major goals of short-term testing.

The hypothesis that conversion of normal cells to neoplastic cells results from heritable genetic changes--the somatic mutation theory of cancer - was proposed early in this century *(1)* and forms a basis for the development of many short-term tests. The relationship of mutation and carcinogenesis has been stressed for some time *(2)*. However, early studies relating mutagenesis and carcinogenesis were generally unsuccessful due in part to the need for metabolic activation of most carcinogens. Pioneering studies by the Millers and associates *(3)* on metabolic activation of chemicals and the coupling of metabolic activation systems and mutable targets *(4,5)* allowed further elucidation of the possible relationship between mutagenicity and carcinogenicity. During the past 15 years, many short-term systems that detect mutagenesis and other genetic effects have been developed and attempts have been made to correlate the results of these tests with carcinogenesis. The tremendous number of chemicals that remain to be evaluated for potential hazard and the mounting cost of currently acceptable rodent carcinogenesis assays amply justify the continued effort to develop and utilize short-term tests, and to establish a mode for their application in assessing the potential of chemicals to induce cancer.

The search for tests with the capability to identify potential chemical carcinogens has yielded a variety of assay systems with a diversity of endpoints. The existence of such a large number of assay systems (approximately 100 have been described [6.7]) reflects both limitations and differences between assays, as well as our uncertainty about the mechanisms of induction and progression of carcinogenesis. As described in Chapter 1, the induction of cancer may have many potential mechanisms (gene or chromosomal mutation, heritable changes in DNA transcription reflected in induction or cessation of gene expression, etc.), but no causal relationship has yet been established between any mechanism of induction and any specific neoplasia. In addition, a variety of factors or conditions such as tumor promoters, hormonal levels, rate of cell proliferation, cell type specificity, genetic predisposition, etc. are known to influence the expression of neoplasia, regardless of the nature of the inducing agent. Because of the relatively small number of known human carcinogens, the predictive capability of the short-term assays is usually assessed by validation with the many more chemicals which are carcinogenic in long-term animal tests.

This chapter describes the major categories of short-term assays for chemical carcinogens, attempts to evaluate the assay systems, and recommends further studies required to define their predictive ability. The term "genetic toxicity" is used in this chapter to indicate any effect that can be attributed to an interaction between the test agent and the genetic material of the test organism. There have been attempts to classify carcinogens on the basis of whether they show evidence of direct interaction with DNA or act by some indirect effect ("epigenetic") *(8)*. However, the assay systems conventionally used to make this distinction may not detect all types of chemical-DNA interactions, nor do they adequately accommodate the tissue or cell-specific metabolism or target specificity which many carcinogens demonstrate. So it is not possible to conclusively make a clear distinction between genetically toxic and "epigenetic" on the basis of currently available *in vitro* tests. However, the fact that certain factors or substances do appear to induce tumors without appearing to react directly with the DNA indicates a need for development of short-term tests complementary to those which detect direct effects on the DNA if all types of chemical carcinogens are to be detected.

Many of the tests for genetic toxicity are also useful in the identification of potential germ cell mutagens; however, this represents a distinct application of the tests, and the reader is referred to the recent report of the National Academy of Sciences *(9)* for further information on this subject. In addition, screening of chemicals for genetic activity can identify agents that may be involved in the aging process or atherosclerosis *(10,11)*.

II. THE SHORT-TERM TEST SYSTEMS

There have been numerous descriptions of the assays that have been developed and evaluated for their capability to detect potential carcinogens, but the details of these systems will not be discussed herein. The reader is directed to the EPA Gene-Tox Evaluations *(12-40)*, the International Collaborative Program *(41)* and the review by Hollstein *et al. (6)* for details and further references to the individual systems. The four principal biological endpoints represented by the available tests are gene mutation, chromosomal effects, general DNA damage and neoplastic transformation. Some frequently used assays are listed in Table 5.

A. Gene Mutation

Although it is possible to assay for chemically induced mutation with a variety of methods in a number of organisms and cells, the greatest amount

of information on tests for potential carcinogens is derived from a relatively few systems. The system in which the largest number of chemicals has been evaluated is the *Salmonella*/microsome test (Ames test) *(42,43)* where several strains of the bacterium *Salmonella typhimurium* have been genetically altered in order to provide increased sensitivity to potential mutagens. In the Ames assay, reverse mutations in the histidine locus (*i.e.* from a histidine requirement to independence) are detected. By virtue of the sensitivity, ease and relatively low cost of performance and duration of the test (48-72 hours), this assay has been used worldwide to test for chemical mutagens. Other microbial systems can also be used (Table 5) but have not been used nearly as extensively as the Salmonella assay. Cultured mammalian somatic cells (which are genetically more similar to cells as they exist in humans than to bacteria) such as the mouse lymphoma (L5178Y) *(39)*, Chinese hamster ovary (CHO) *(14)*, and Chinese hamster lung cells (V79) *(18)*, have also been used to detect gene mutations induced by a variety of chemical agents and radiations. The various systems that have been developed are capable of detecting forward and/or reverse mutations. However, none of the specific gene loci conventionally used in the bacterial or mammalian cell mutagenesis systems (his, tk, oua, hgprt, etc., Table 5) appear to be related in any way to the cellular changes that occur in the induction of neoplasia. These loci are used to measure the capability of a chemical to interact with the DNA of an organism in such a way as to give rise to mutagenic effects. Although it has been widely assumed and theorized that neoplasia arises from mutation, it is known that heritable phenotypic changes also occur in mammalian cells in the process of differentiation and growth and such changes arise without the induction of gene mutation. Consequently, it is necessary to use additional biological endpoints that reflect the capacity of chemicals to cause changes through other types of interactions with the genetic material.

TABLE 5 - CONVENTIONALLY USED SHORT TERM ASSAYS

Type of Assay	Endpoint	Reference
Mutation		
a) Microbial Systems		
Salmonella typhimurium.	Histidine reversion	42
Escherichia coli	Tryptophan reversion	12
b) Mammalian Cell Systems		
Mouse lymphoma (L5178Y).	Thymidine kinase (Bromodeoxyuridine or Trifluorothymidine [TFT] resistance).	39
Chinese hamster ovary (CHO).	Hypoxanthine guanine phosphoribosyl transferase (6-thioguanine [6TG] resistance).	14
Chinese hamster lung (V79).	Hypoxanthine guanine phosphoribosyl transferase (6TG resistance).	18
	Na/K ATPase (Ouabain resistance).	
Human lymphoblasts.	Thymidine kinase (TFT resistance).	44
	hypoxanthine guanine phosphoribosyl ribosyl transferase (6TG-resistance).	
Chromosome Effects		
Many cell types in vitro and in vivo.	Chromosomal aberrations.	17,19
	Sister chromatid exchanges.	
	Micronuclei	
	Chromosome gain or loss.	
	Translocation	
DNA Damage		
Unscheduled DNA Synthesis (UDS).	Radioactive nucleoside incorporation.	40
Repair deficient bacteria	Differential growth inhibition.	20
Mammalian Cell Transformation		
Cellular		35
Syrian hamster embryo (SHE), Balb/c 3T3, C3H/10T1/2.	Altered cellular morpholcgy and growth pattern, growth in soft agar, tumorigenicity.	
Viral enhanced/ mediated Syrian hamster embryo (SHE)/ Simian adenovirus type 7 (SA7), Fischer rat embryo cells/ Rausher leukemia virus.	in appropriate host	35

TABLE 5 - CONVENTIONALLY USED SHORT TERM ASSAYS—Continued

B. Chromosome Effects

Changes in the structure or number of chromosomes occur frequently in tumor cells *(45)* and cells from individuals exposed to radiation show evidence of chromosome damage *(46)*. Cytogenetic short-term tests have demonstrated that a number of carcinogens can cause structural alterations of chromosomes (aberrations) in the bone marrow of exposed animals or in cultured cells derived from various tissues *(19)*. There is increasing evidence that associates specific chromosomal rearrangements (translocations) with specific neoplastic phenotypes *(47)*. Although no definitive causal associations have been delineated, the use of molecular and recombinant DNA techniques promises to aid in resolving the relationship between translocation of large segments of chromosomes and the specific DNA sequences involved. Another assay often used in conjunction with the search for chromosomal aberrations is the induction of sister chromatid exchanges (SCEs) *(48,49)* that are believed to result from the induction of recombination by DNA damage. However, the association between an increase in the frequency of SCEs in cells *in vitro* or *in vivo* and heritable changes has not not been clearly defined.

It is also possible to identify the production of chromosome fragments (micronuclei) in reticulocytes or erythrocytes *(50)*. Induction of micronuclei has been associated with chemical exposure and is also believed to be indicative of the ability of chemicals to induce chromosomal aberrations, but it is also not yet clear that the induction of micronuclei is related to heritable changes in cellular phenotypes.

A long-range potential value of tests for chromosomal effects is that they may be used to assess the comparative (*trans*-species) toxicity of chemicals. Since the sampling for cells is non-destructive to the exposed animal or individual, and because the assays can be conducted on cultured cells, comparisons are possible between various species and humans. However, such comparisons must be conducted with the understanding that chemical disposition (pharmacokinetics) may vary with species thus giving rise to species-dependent target cell populations. Additionally, the monitoring of human blood cells for chromosomal effects may be a valuable method to assess human exposure to hazardous chemicals *(51)*.

C. DNA damage and repair

These tests do not measure mutation *per se*, but DNA damage, or the cellular repair of such damage, induced by the chemical treatment of microbial or mammalian cells. The most extensively used method is to detect non-S phase DNA synthesis (unscheduled DNA synthesis - UDS) in hepatocytes *(40,52)*, although other cell lines *(40)* have also been used. Techniques that measure DNA strand breaks *(23)* or binding of chemicals to cellular DNA *in vivo* or *in vitro (53)* are also used as assays for DNA damage. Other assays use strains of *E. coli* or *B. subtilis* and are based on differential growth inhibition of DNA repair proficient and deficient strains *(20,54)*.

D. Cellular transformation

Exposure of cultured mammalian cells from a variety of tissues and species to

carcinogens (biological, chemical and radiations) has been shown to result in certain heritable phenotypic changes. A variety of these changes has been described *(35,55)*, but some specific morphological changes have been shown to be highly associated with the capacity of the cells to induce tumors when inoculated into appropriate recipient animals. Because of this ability of transformed cells to produce tumors in recipient hosts, these assays have been considered by some to be the short-term systems most relevant to detection of chemical carcinogens *(6,35,51)*. Several cellular systems derived from rodent embryos have been used to identify chemical carcinogens (Table 5), some of which use concomitant infection with transforming or nontransforming viruses *(35,55)*. There is no clear understanding of the mechanism of *in vitro* transformation, and it is likely that the various heritable alterations can occur through one of several possible mechanisms. Recent innovative advances at the cellular and molecular level are having a major impact on our understanding of this process *(56,57)*. As the implications of studies on oncogenes and transfected transforming genes become better understood and are incorporated into methods for detecting carcinogens (see Chapter 1), there is the promise of significant improvement in the accuracy with which these systems can be used to detect carcinogenic chemicals.

E. In vitro promotion systems

The existence of chemicals which appear to cause (or promote) cancer by mechanisms which may or may not directly involve the genome (see Chapter 1) has necessitated the development of short-term systems that can detect these types of chemicals. However, it should be emphasized that chemicals may have both initiating and promoting activity, and the two properties are not mutually exclusive. The V79-metabolic cooperativity assay *(58)* has been the most thoroughly studied *in vitro* system developed to detect chemicals with promoting activity. A basis for this assay has been attributed to the interruption of cell-to-cell communication, although the exact mechanism is unknown. Further studies with this and other promotion systems are needed before they could be reliably used as test systems to detect chemicals that act as promoters of tumorigenesis.

F. In vivo short-term bioassays

Several short-term *in vivo* bioassays to detect carcinogens and/or promoters have been developed. Of these assays, the mouse skin papilloma system and the strain A mouse lung adenoma have been used for testing while the liver foci bioassay is still in developmental stage. These systems are generally viewed as intermediate in biological relevance between *in vitro* systems and the long-term animal bioassay because *in vivo* metabolism and/or chemical disposition are provided for by *in vivo* exposure. However, as with the *in vitro* tests, the relevance of the endpoints measured to the development of malignant tumors remains an open question.

The mouse skin papilloma system, first reported by Berenblum *(59)*, is based on a multistage (initiation and promotion) hypothesis of cancer induction and has been developed further in other laboratories *(60-64)*. The system relies on the induction of benign papillomas, although carcinomas do develop in the later course of the assay. Variations in experimental test design reportedly allow chemicals to be classified as: initiating carcinogens, promoters, complete carcinogens (chemicals with both initiating and promoting activity), co-carcinogens, and co-promoters *(64)*. Several strains of mice have been used in the assay, but the SENCAR stock appears particularly sensitive *(64)*. The mouse skin papilloma assay is the *in vivo* system in which the greatest numbers of chemicals have been tested *(65)*; however, many of the chemicals investigated have been polycyclic aromatic hydrocarbons, and the usefulness of the system to test other classes of chemicals, or chemicals with organ specificity other than skin, is not presently clearly known.

The strain A mouse lung adenoma system was developed by Shimkin and colleagues *(66-69)*. Although lung adenomas do occur spontaneously in mice, the strain A mouse, unlike other strains, has nearly a 100% lifetime incidence *(69)*. Therefore, the assay appears to rely on decreasing the time-to-tumor onset by the test chemical, although Stoner and Shimkin consider the test chemical to be inducing rather than accelerating the process *(68,69)*. A wide spectrum of chemical classes has been tested in the lung system (for review, see 69) and good correlations of results and the tumorigenicity of the chemicals have been reported although one study using diverse coded chemicals did not find a high correlation *(70)*. The system has been criticized because the adenoma is a benign growth and an analogous tumor does not appear in humans.

The induction of altered foci in rat liver systems has also been studied for use as short-term *in vivo* assays for carcinogens and promoters. However, these systems are relatively new and are still in a developmental stage compared to the mouse skin papilloma and lung adenoma assays. The rodent liver systems have been used by Peraino *et al. (71)*, Pitot *et al. (72)*, and Solt and Farber *(73)*, to study the initiation/promotion phenomena. The endpoints that have been measured include the appearance of foci in the liver which have increased gamma-glutamyl transpeptidase, basophilia, or diaphorase; or foci with decreased glucose-6-phosphatase, adenosine triphosphatase or iron storage (see 74 for review). Chemicals can be tested either for initiating or promoting activity in the liver assays. Since defined protocols have not yet emerged, further development is required before the possible value of the approach in a routine testing program can be assessed. In addition the relationship of the altered liver foci to hepatocellular neoplasms remains to be determined.

III. FACTORS IN TEST EVALUATION

A. Metabolic Activation

Most target cells used in short-term tests have limited endogenous metabolic capability for xenobiotics and, therefore, must be supplemented with an exogenous metabolic activation system. The metabolic activation systems employed in short-term tests may be one of the major limitations in these assay systems, because a chemical may show a different metabolic profile *in vitro* from what would occur *in vivo*. From a testing point of view, a major concern is that specific activating enzymes or pathways may be decreased or lost during preparation of the metabolic activation system, thereby giving a false negative result with the test chemical. Alternatively, enhanced activation of certain chemicals would also be possible (false positive). Essentially, three types of metabolic activation systems have been used with target organisms - host-mediated *(24,75)*, intact cells *(76,77)*, and organ homogenates (usually 9000 x g supernatants called S9 [10,43]). Most short-term assays have used rat liver S9 preparations because of the ease of preparation and storage, capability to activate many chemical classes, and the relative compatibility (nontoxicity) with most target organisms used in genetic toxicity testing. However, it is also known that liver S9 preparations may cause different responses *in vitro* from what would occur *in vivo* due to factors such as: organotropic differences, chemical induction of S9 preparations, and

destruction of certain activation enzymes during S9 preparation, decrease in conjugation capability, etc. Therefore, the inability of S9 preparations to mimic *In vivo* activation has provided the impetus to modify S9 utilization and/or investigate other metabolic activation systems.

Intact cells are another exogenous metabolic activation system used in short-term tests *(77)*. These cells can be primary cultures prepared from various organs (liver is most common), embryonic cells that have been cultured only a short time, or in certain cases, established cell lines. For such an activation system to function, the test chemical must be taken up by the activating cell, be metabolized, and the activated product be transferred to the indicator cell. Thus, a negative response with a cellular system may be a function of the uptake of the test substance and the transfer and stability of active metabolites. Since most cells lose significant metabolic capability with time in culture, certain enzyme systems may be functional at reduced levels. However, this loss of activation capability can be at least partially overcome by the use of freshly prepared primary cells.

In the host-mediated assay, the indicator organism is introduced into the peritoneal cavity or injected into the circulatory system of an intact mammal *(24,75)*. The animal is then treated with the substance under test, sacrificed, and the test organism removed and examined for mutation induction. A wide range of indicator organisms has been used *(24)*. Because an organism foreign to the host is commonly used as the indicator organism, problems arise such as: 1) interaction between the host and the indicator organism, including immunological interactions; and 2) the limited time the indicator organism can be kept in the animal. Therefore, this system is unable to detect many carcinogens and chemicals which show *in vitro* mutagenesis.

Attempts to improve metabolic activation systems are certainly worthwhile and have increased our ability to detect carcinogens using *in vitro* methods. One must accept, however, that it is not possible to mimic *in vivo* metabolism in a petri plate and that negative *in vitro* results may represent "false negatives" and positive *in vitro* results may represent "false positives." These possibly erroneous test results due to metabolic activation can sometimes be resolved through the use of short-term *in vivo* rodent assays. A testing scheme has been proposed by Ashby *(78)* whereby short-term rodent assays are employed to study further chemicals falsely identified in the *in vitro* systems.

B. Statistical Evaluation of Short-term Test Data

The overwhelming majority of short-term test data in the literature has not been statistically evaluated. In general, decisions of "positive" and "negative" are made on a subjective basis or on the basis of simple statistical procedures. Recently, several statistical procedures have been proposed for the Salmonella assays *(79-81)*, the mammalian cell mutation *(82)* assays, and discussions of statistical approaches appear in the respective Gene-Tox reports, but there is no consensus as to which particular procedures should be used for data evaluation.

C. Factors in the Correlation of Assays with Carcinogenesis

Because short-term tests for carcinogens employ neither the organism (humans) or the biological endpoint (cancer) of concern, there is a need for a great deal of extrapolation of test results, and hence the demand for proving the validity of the tests is great. However, after more than a decade of effort to demonstrate the utility of short-term tests in predicting carcinogenicity, it is still difficult to find sufficient test results to assess: 1) the performance of an assay within or among chemical classes; 2) the activity of a chemical in a variety of tests; or 3) the performance of a group of the tests on even a small group of chemicals. This deficiency in the existing data results largely from two factors. First, there has not been enough of an effort to evaluate systematically a large number of chemicals in a group of selected assays, and second, there is a marked deficiency of genetic toxicity results on noncarcinogens. This latter point presents an immediate obstacle to the evaluation of short-term tests for carcinogens, since in the absence of an adequate data base on noncarcinogens, it is not possible to determine the performance of a single test or group of tests in discriminating between carcinogens and non-carcinogens.

1. Definition of Some Terms. The reliability of a short-term test system may be defined as its ability to predict accurately a chemical's *in vivo* carcinogenicity. The standard against which short-term test results are most often compared is the rodent cancer bioassay. A short-term test which correctly identifies, when used without bias, a high percentage of known carcinogens and noncarcinogens is assumed to be capable of predicting the carcinogenicity of chemicals of unknown activity with the same degree of accuracy. The short-term assay's performance can be expressed by three criteria: sensitivity, specificity, and accuracy. Sensitivity is the proportion of carcinogens giving positive results; specificity is the proportion of non-carcinogens giving negative results; and accuracy is the overall proportion of correct results. Unfortunately many, if not all, previous test system evaluations have been characterized by an inadequate number of non-carcinogens, and, hence, a determination of specificity and accuracy is severely limited. Also, the accuracy of short-term tests could be altered by the ratio of carcinogens and non-carcinogens in the test sample *(83)*. Additionally, the expected accuracy of a test battery (see below) is influenced by the number of tests in the battery and the number of individual tests required to be positive before the chemical is considered to be positive in the battery *(84)*.

2. Non-carcinogens and Test Analysis. The inadequate identification of, as well as the use of, non-carcinogens, as has been noted, is one of the key problems. Many chemicals have been identified as non-carcinogenic merely on the basis of their chemical structure or perfunctory carcinogenesis tests. To date, relatively few chemicals used as non-carcinogens in short-term tests have been tested in lifetime studies using adequate chemical exposures. A major source of information on noncarcinogens is that of the NCI/NTP rodent bioassay where two sexes/species are exposed at sufficient concentration of the chemical and for sufficient duration to insure that the chemical has been tested adequately. However, few of these non-carcinogens have been tested in most genetic toxicity assays *(85)*. In addition, factors that determine a "positive" or "negative" short-term test response for a test chemical can vary from laboratory to laboratory or even experiment to experiment within a laboratory. Often parameters such as control background levels, acceptable range of positive control responses, statistical significance of test chemical response, etc., all of which are important in determining whether a chemical is "positive" or "negative", can be subjective. Such uncertainties could lead to an inaccurate estimation of the sensitivity and specificity of short-term tests.

3. Test Endpoints and Carcinogenicity. The development of the Ames test and subsequent short-term tests were predicated on the assumption

that most carcinogens were mutagens and, conversely, that mutagenic chemicals will be carcinogenic. Implicit in this reasoning is the hypothesis that nonmutagens will not be carcinogenic. However, this conclusion put forth by Ames *et al. (5)* and supported by others *(86-90)*, that carcinogens are mutagens and the majority of non-carcinogens are not mutagens, may be based on biased data. The majority of the data used to justify this statement comes from studies where the identity of the chemicals and their carcinogenicity were known to the investigators before they were tested. Because the investigators knew the identity of the chemicals and their "expected" mutagenicity, the test protocols could be modified until the desired results were obtained. While these practices may lead to a true picture of the mutagenicity of a chemical, and are necessary for the assay system development, they probably tend to overestimate the carcinogenicity/ mutagenicity correlations.

The correlation of data obtained for other endpoints (*i.e.* UDS, cell transformation, SCE induction, etc.) with carcinogenesis data also is subject to the same limitations. However, the correlations between results from these other systems and carcinogenesis are further complicated by the lack of an adequate data base on chemicals of different classes, and, in some cases, a lack of demonstrated interlaboratory reproducibility of test results.

A method which may establish more objectively the correlations between short-term test results and rodent (or human) carcinogenicity is one where chemicals, coded so their identity is unknown to the persons conducting the assay, are tested, and all the test results are judged by the same criteria. Thus, the one conducting the test does not know whether the short-term test results and conclusions are "right" or "wrong" until after a determination is made. This approach may minimize the proportion of carcinogens detected, but it also eliminates preconceptions about the activity of the chemical. In actual practice, however, additional testing using modified protocols can be done on chemicals whose structure would lead one to believe that the original test conditions were not appropriate. For example, some benzidine-based dyes require reducing conditions, followed by an oxidative system, rather than a strictly oxidative system for their activation. Therefore, choice of test systems should vary with chemical class or nature of the test chemical, but determinations of response should be independent of knowledge of the chemical's identity.

4. Attempts to Evaluate Short-term Test Performance. Though not definitive, there have been several systematic efforts to evaluate the short-term assays, singly or in combination, for their ability to detect or predict chemical carcinogens. The largest effort to date was conducted by the Gene-Tox Program of the U.S. Environmental Protection Agency and is a multi-phased effort to review and evaluate selected bioassays for mutagenicity and related endpoints using the published literature. Initially, the literature published from 1969-1979 was reviewed to assess test system performances, to determine the chemicals tested, and the ability of the various systems to discriminate between carcinogens and non-carcinogens. Reports on the individual systems have been published in Mutation Research *(12-40)*. During the second phase, a computerized data base of over 2600 chemicals is being analyzed to determine which tests or combination of tests may: 1) be used for routine screening or need further development; 2) determine if specific types of genetic damage are related to chemical class; 3) discriminate between carcinogens and non-carcinogens; and 4) predict heritable mutagenic risk. To aid in evaluating system performance, the Gene-Tox Program convened a panel to review and evaluate the literature on chemicals designated as carcinogenic and to develop a list of carcinogens and non-carcinogens which could be used in determining system performance.

The International Program for the Evaluation of Short-Term Tests for Carcinogenicity *(41)* was a coordinated effort designed to determine and compare the ability of a series of short-term tests to identify carcinogens and noncarcinogens. Sixty laboratories participated, using their own laboratory protocols, to test coded samples of chemicals supplied from a common source. Test results from this collaborative study led to the following general conclusions. First, while short-term tests are useful in the assessment of potential carcinogenicity, no single test or group of tests was capable of detecting correctly all carcinogens and noncarcinogens. Secondly, there are *in vitro* eukaryotic assays that may complement the bacterial tests by identifying carcinogens not detected in bacteria.

Following the completion of the collaborative study discussed above, a subsequent study was initiated to focus specifically on the evaluation of *in vitro* eukaryotic assays with potential for identifying carcinogens not detected, or poorly detected, in bacterial mutation tests *(91)*.

Other systematic attempts to evaluate the short-term assays include an analysis of their ability to detect pesticides *(92)* and a series of reports prepared for the International Commission for Protection Against Environmental Mutagens and Carcinogens (ICPEMC) *(78,93)*. The NIH/NTP is currently conducting a systematic genetic toxicity assay of chemicals, both carcinogens and non-carcinogens, tested or under test in the rodent, two sexes/species carcinogenesis assay. The major categories of genetic toxicity are represented, and the chemicals are tested under code.

IV. PRACTICAL ASSAY UTILIZATION

A. Assay Selection

The proposed use of short-term tests to detect or predict chemical carcinogens is based on two factors: first, that they require less time to conduct than a rodent carcinogenicity study; and, second, that they are less costly. Currently used tests require from a few days to several weeks to conduct, and the costs may range from 1000 to 20,000 dollars per chemical.

Since there has been little success in establishing a cause-effect relationship between specific genetic changes and cancer, all categories of induced genetic change may be potential mechanisms by which cancers arise, and this is reflected in the variety of endpoints detected by short-term tests. Current short-term testing practices generally involve groups of tests selected on the basis of theoretical prudence rather than on an empirical demonstration of their ability to predict carcinogenicity. By theoretical prudence, it is meant that a range of organisms (bacteria, yeasts, cultured mammalian cells, intact rodents) and endpoints (gene mutations, chromosomal damage, DNA damage, and *in vitro* neoplastic transformation) are employed in an attempt not to miss any effect that might be related to the carcinogenicity of the test agent. However, until the time that basic research on mechanisms of cancer induction provides us with a better understanding of the process, it will be necessary to base testing strategies on a combination of theoretical prudence and correlative evidence obtained by comparing short-term test results with carcinogenicity test results.

In the selection of short-term tests, factors other than ability to discriminate between carcinogens and

noncarcinogens must be considered. Reproducibility of test results is a paramount consideration that applies not only to reproducibility within a laboratory but also to agreement of test results among laboratories. When testing chemicals, the ability to reproduce test results qualitatively is more important than quantitative reproducibility. Quantitative differences in test responses represent the degree of response and may be attributed to protocol variables. However, qualitative differences are more serious and affect the judgment of whether a test chemical is "positive" or "negative." Therefore, short-term test selection should be based on reproducibility as well as reliability, sensitivity, specificity, and accuracy. In addition, the degree of development of a particular assay system should also be taken into consideration when selecting tests for use in a screening program. This includes a consideration of the number of laboratories performing the assay, degree of protocol standardization, and a consideration of the number of chemicals and chemical classes which have been tested in the assay.

B. Assay Application

The application of short-term tests to chemical safety evaluation raises questions at several levels of the process. As discussed above, assay performance must be known to determine which tests are useful. Next, it must be decided how many tests to use and in what scheme or order they will be utilized. Tier and Battery testing approaches have been proposed. In the Tier approach, the choice of assay system varies depending on the activity of the chemical in the previous system, beginning usually with the *S. typhimurium* assay. Therefore, decisions are made after each test result is obtained. With the Battery approach, the test chemical is assayed in a group (battery) of systems and a decision on the activity of the chemical made when all results have been obtained.

Once test results from the short-term test scheme have been obtained, it must then be decided how to utilize the results. Within the framework of testing or evaluating chemicals for potential carcinogenicity, where possible regulatory action on the chemical may be involved, short-term test results can be used to influence the process at numerous points including:

(a) The nomination and/or selection of the chemical for prechronic and chronic studies;

(b) The selection of prechronic studies to be conducted;

(c) The decision, used in combination with prechronic results, to proceed with chronic studies;

(d) The evaluation of chronic toxicity results, as a source of additional information;

(e) The design of postchronic studies, again as an additional source of information, to further elucidate mechanisms of activity.

In the industrial setting, short-term tests can be (and are) used extensively in product development, process improvements, product registration, evaluation of occupational environments, etc.

It is generally agreed that a scheme employing multiple tests is a better approach to carcinogen screening than the use of a single test. The tests used should not be limited to prokaryotic or lower eukaryotic test systems and should include assays for more than one genetic endpoint. A problem that is immediately encountered when multiple test systems are used, however, is a mixture of positive and negative results. The resolution of this problem is not easy, and several authors *(94-96)* have attempted to deal with the issue. For the present, there are at least three approaches to dealing with such conflicting test results. One may: 1) use a weight-of-evidence approach to call a chemical positive by some predetermined criterion; 2) use one's best scientific-judgment to reach a conclusion on a chemical-by-chemical basis; or 3) simply postpone judgment until the time that a sufficiently large data base is available to permit an unequivocal conclusion from any pattern of positive and negative results. This last choice is rarely acceptable, and current practice generally utilizes some combination of the first two. The systematic accumulation of additional knowledge on cross-system testing of various classes of chemicals should provide insight into the proper choices of short-term systems in assessing potential carcinogenic activity.

C. Future Directions

Short-term tests for genetic toxicity and other effects continue to hold promise of improving our ability to identify potential chemical carcinogens. However, there is at present insufficient data available to justify the use of current tests to supplant animal bioassays. To improve the interpretation of short-term test results, there is a need for a systematic effort to obtain across-test results using *optimal* test protocols and coded chemicals, with particular emphasis on non-carcinogens. It is clear from available results that no one assay system is adequate, but it is not yet possible to determine which combination of test systems is most appropriate for most carcinogens. Studies are needed to determine if human cells or tissues would be better predictors of human carcinogenicity than the currently used rodent systems. Some carcinogens, by virtue of their intrinsic mechanism of action, will not be identified by available tests, and we must continue to search for assay systems that accommodate the various molecular mechanisms. Concomitantly, we must continue to improve our understanding of the results of rodent assays for carcinogens. Where there is a dichotomy of results between genetic toxicity or other short-term test systems and the results of rodent carcinogenicity, appropriate follow-up studies in the appropriate systems should be conducted to determine the basis for such differences.

V. SUMMARY

While many assay systems have been developed and proposed to detect or assess the genetic toxicity of chemicals, they can be generally grouped into four categories: gene mutation, chromosome effects, DNA damage, and transformation. The internal momentum of the field has resulted in the emergence of a few systems or tests in each category that have been used extensively to assess potential carcinogenicity, and the various assays within each grouping have characteristic strengths and weaknesses. The test systems must be demonstrated to have reliability, sensitivity, specificity and accuracy and to be reproducible both within and between laboratories. The various systems also measure different biological endpoints, and there is no reason to expect that all chemicals will cause an effect in all systems. Since no causal relationship has been established between any specific mechanism of induction and any specific type of neoplasia, we are presently limited in our ability to predict potential carcinogenicity of a chemical, particularly when there is apparent disagreement between different *in vitro* test results.

The consensus of available information suggests that short-term tests, when properly used and validated, can provide strong indications of potential carcinogenicity. However, based upon our limited knowledge of the mechanisms of cancer induction, it appears that there will be classes of carcinogens that are not detected by currently available short-term tests.

Chemicals which act by a genetic mechanism but which have a high degree of organ, species, or sex specificity may be predictably difficult to detect in any *in vitro* genetic toxicity system since the short-term system may not adequately simulate the basis for these specificities. Additionally, chemicals which appear to act by non-genetic mechanisms would not be detected in currently available short-term tests.

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CHAPTER 3--LONG-TERM CARCINOGEN BIOASSAY

I. LONG-TERM CARCINOGEN BIOASSAY: GUIDELINES FOR PROTOCOLS

A. Background

The current carcinogen bioassay in rodents has its origins in research efforts, begun in the 1920s, that sought to determine the carcinogenic potential of chemicals as well as to delineate the mechanism by which they produce cancer *(1,2)*. Animal strains were developed and tested for their specific sensitivity or resistance to certain types of cancer. These studies had as their central focus the understanding of the mechanism of carcinogenesis *(1,2)*. While these experiments led to the induction of cancer in laboratory animals and revealed many new carcinogens, most of the investigators did not intend their highly specialized test systems to be used as routine methods for testing large numbers of chemicals. Only in the mid 1960s, with the advent of the bioassay program at the National Cancer Institute (NCI), did large-scale systematic testing using a relatively standard protocol really begin *(3)*. As a consequence, only recently has there been a reasonably adequate data base on a large number of diverse chemicals tested in a relatively uniform way *(4,5)*. The lack of such a data base, during the earlier developmental period, contributed to some degree of confusion and speculation as to how carcinogens should be tested and how the results from such tests should be interpreted. One finding was clear; known human carcinogens, with the single exception of arsenic, are carcinogenic in appropriately conducted studies in some animal system (arsenic has recently been reported to produce carcinomas of the respiratory tract in hamsters [6]). This does not mean that all chemicals found carcinogenic in animals will turn out to be carcinogenic in humans. Because of differences in the production of critical metabolites and because of other differences between species, a given carcinogen may not produce cancer in all species or in all strains of rodents. Many substances are known that seem to be carcinogenic in one animal species but not in another. But a finding of carcinogenicity in rodents is proof that the chemical is carcinogenic in a mammalian species. And "in the absence of adequate data on humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficent evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans" (Preamble, IARC monographs, *e.g.*, ref. 7) The knowledge and experience accumulated over the last decade, while by no means answering all questions, have helped to focus the issues and have provided a basis for developing some common procedures for conducting and interpreting long-term bioassays.

B. Critical Design Criteria

Several national and international groups have published guidelines on the design and conduct of long-term bioassays *(7-18)*, and the issue continues to be pursued. For example new guidelines are currently being developed by the NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation *(19)*. Essentially, the long-term test involves testing compounds in animals to obtain information relevant to humans. When assessing the results of toxicological testing of any chemical, the limitations of the tests must be borne in mind. Of necessity, animal systems are used and the results then extrapolated to humans. Such extrapolations may not always be accurate either qualitatively or quantitatively. In some areas of cancer testing, uncertainty still exists concerning the most appropriate experimental design. For example, there are varying opinions on the optimum duration of a study and the number and types of species of test animals that are considered appropriate. It is probably unwise to adopt rigid "standard" test methods for all chemicals; judgment must be exercised to select an appropriate model for a particular chemical *(15)*. Obviously, due to limitations of sample size (the number of animals on test), low incidence effects can go unrecognized. Consequently, although the results of carcinogenicity testing will, in many cases, give good indications of possible hazard, they do not eliminate the need for continuing careful observations of humans *(8)*. In fact, most known human carcinogens, such as 2-naphthylamine and chlornaphazine, were first discovered by observing humans, and only later were they found carcinogenic in animals. The reverse was true for other compounds such as diethylstilbestrol (DES), vinyl chloride, or bis(chloro-methyl)ether.

The following constitutes a series of major issues which should be carefully considered in the design of a carcinogen bioassay.

1. Species and Strain of Animal. Ideally, the appropriate animal species and strain is one, which, for the chemical tested, is able to predict human response accurately. However, the fact is that only three species have been routinely used in carcinogen bioassay *(20)*. All three are rodents: the mouse, the rat and the hamster. Only these species generally meet the requirements that the animals be readily available, that the bioassays are likely to be relevant to humans, and that the bioassays be cost effective and relatively quickly performed. Included in these requirements are: 1) the life span of the species must be of reasonable length, long enough to allow time for tumors to develop and short enough to be economically feasible (2-3 years); 2) the animal should be small and should live and breed well in captivity; 3) there should be similarity to humans in regard to metabolism and pathology responses; 4) strains should be those most likely to be susceptible to cancer from the particular chemical yet not hypersensitive. Only these three species and a few strains currently meet these specifications, however, there are potentially many more inbred or hybrid strains which can provide a wide range of diversity in their metabolism of and response to carcinogens or carcinogenic precursors. There is still no scientific consensus over whether inbred or outbred strains of rodents are better for long-term studies *(20-25)*. While the use of inbred strains may produce more precise and more stable biological responses, more prosaic strains may more accurately reflect human response, are less expensive, often hardier and are less prone to deterioration due to genetic drift. The NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation strongly recommended but did not insist 'that NTP bioassays be restricted to inbred or hybrid strains' *(19)*. When the test substance is chemically related to other human carcinogens, the strain chosen can be that used for the carcinogenic chemical analogue. Extensive experience in using a particular strain is often a strong reason for continuing its use despite its acknowledged limitations *(17-26)*. One major advantage is the availability of abundant data on spontaneous tumor rates at specific organ sites.

Because of genetic differences in tumor susceptibility the use of only a single strain of animal rather than an array of strains represents an experimental compromise, but an essential one given the large cost of a single long-term study. The possibility of a false negative result is reduced by the current recommendation to use two species instead of one in a carcinogen bioassay. More than 90% of the time these species are the rat and mouse. The Fischer inbred (F344) rat and the B6C3F1 hybrid mouse are commonly chosen for carcinogen bioassay, in large part

because of the experience gained by the NCI from their use *(4,19,27)*. Despite its long history, the continued use of the B6C3F1 hybrid mouse by the NTP is currently under review because of the difficulty in interpreting the significance of proliferative liver lesions *(4,8,9,19,28-30)*. The merits of using only a rat strain instead of both a rat and a mouse strain have also been recently discussed *(30)*. This issue and others relating to species selection are considered in the NTP Ad Hoc Panel's Report *(19)*.

2. Animal Care and Diet. Stringent control of environmental conditions and proper animal care techniques are mandatory for meaningful results *(12)*. Access to animal facilities should be limited to essential personnel to prevent excessive traffic and the transmission of disease. Factors such as housing conditions, intercurrent disease, drug therapy, impurities in diet, air, water, and bedding, and animal care facilities can significantly influence the outcome of animal experiments.

The control of intercurrent infectious diseases or parasites is facilitated if rodents are bred and maintained in conditions free from specific pathogenic organisms. Animals from outside sources should not be placed on test without an adequate period of quarantine. Bedding to be used in long-term studies should be absorbent, sterilizable and free of pesticides, other toxic contaminants, or enzyme inducing substances. Animals should be housed in quiet, well-ventilated rooms, having controlled lighting, temperature and humidity. It is advisable to balance dose groups over rows, columns and racks to allow for potential location effects across dosage levels. Alternatively it may be advisable to rotate cages or racks periodically to balance potential sources of variability. Eye lesions (retinal and lenticular degeneration) have been observed with animals kept in cages in closest proximity to light. Experiments should not be initiated until animals have been allowed a one to two week period of acclimatization to environmental conditions.

The absence of biases in selection and allocation of animals between control and treatment groups, as regards diet, husbandry, necropsy and pathology is crucial *(31)*. Since mice are reservoirs of asymptomatic viral disease, it is best to house mice and rats separately where possible. However, it is acceptable practice to house rats and mice in the same room if: 1) they are free of disease; 2) they come from the same supplier; and 3) they are being treated with the same chemical. It is preferable not to mix animals from different suppliers or from two locations of the same supplier. Housing disease-free animals in the same room reduces the chance for differences due to environmental variables. If a population of animals is diseased, then consideration must be given to aborting the study and starting over. Drug therapy should be avoided in bioassays since it is a confounding factor.

Control animals and test animals should be housed in the same room unless there is a possibility of cross-exposure. The availability of hoods, laminar air flow rooms, caging devices and personnel practices all affect the extent to which experiments should be separated or combined. To minimize the chance for inadvertent cross-exposure of animals to the test substance, it is advisable to test only one chemical in each room. If more than one chemical is tested in a room, the actual cross-contamination of chemicals within the room must be measured. Good laboratory practice need not rule out all flexibility nor restrict the use of judgment or impose unnecessary expenses *(32,33)*.

Cages, racks and other equipment must be regularly and thoroughly cleaned. Periodic analysis of the basal diet should be conducted for both nutrients and unintentional contaminants, including carcinogens. The results from such analyses should be retained and included in the final report on each test substance. The essential dietary requirements of rodents are relatively high in protein and low in calories derived from fat (about 2-4% of calories). In the administration of substances by gavage using vegetable oils, the amount of fat ingested in rats can reach 30% *(34)*. These facts, coupled with emerging data on the influence of dietary protein and fat on cancer incidence, and the presence of trace levels of carcinogens in animal diets may be important to future re-evaluation of bioassay results. Furthermore, the quality of the agricultural crops that go into animal feed can vary seasonally. Varying amounts of naturally occurring enzyme inducers from plant material in animal feeds may affect the course of a long-term test for carcinogenicity. It is therefore important to document and retain pertinent information on diet source and quality.

When the test substance is administered in long-term studies, stability tests are essential. Properly conducted stability and homogeneity tests, prior to the chronic study, should be used to establish the frequency of diet preparation and monitoring required. Similar monitoring is required of the atmosphere within a chamber in inhalation tests to determine the necessity of rotating animals within the exposure chamber and the frequency of monitoring required. The stability of the neat chemical, if it is to be used for a long time, as in long-term skin-painting studies, should also be determined.

If diets are sterilized, the effects of such procedures on the test substance and dietary constituents should be known. Appropriate adjustments to nutrient levels should be made.

During carcinogenicity tests, investigators should be aware of potential chemical contaminants in the water used. Although water approved for human consumption is generally satisfactory, the investigator should determine the levels of potential contaminants that are likely to influence the outcome of the study. The analyses of the water supply should be included in the reports of these studies.

3. Test and Control Groups. The number of animals to use has been the subject of great concern because of the fact that the test animals may be serving as surrogates for more than 200 million people in the U.S., and potentially for far more worldwide. While it is desirable to enhance the sensitivity of the test, it is not feasible to use very many animals. Furthermore, a moderate increase in the group size provides relatively little increase in the statistical power of the test. Therefore, careful attention must be paid to experimental design to assure the maximum reliability of the study and that the results are amenable to statistical evaluation. The use of adequate randomization procedures for the proper allocation of animals to test and control groups is of particular importance. A sufficient number of animals should be used so that at the end of the study enough animals from each group are available for thorough pathological evaluation. For such reasons, it has been recommended that each dose group and concurrent control group should contain at least 50 animals of each sex *(4,14,15, 19)*. If interim sacrifice(s) is included in the study plan, the initial number should be increased by the number of animals scheduled for the interim sacrifice(s).

At least one concurrent untreated control group, identical in every respect to the exposed groups, except for exposure to the test substance, should be used. In certain studies, such as with inhalation exposures that require unique housing conditions, it may also be appropriate to include an additional concurrent control group housed under conventional conditions.

Occasionally a positive concurrent control group is useful, particularly when there is reason to believe that the strain of animals may be resistant to the particular class of carcinogens or that a previously sensitive strain has become insensitive because of genetic drift. A positive control can also provide some information on the relative carcinogenic potency of the tested chemical. In routine carcinogenicity testing, no positive controls need be used *(4.14)*.

4. Dose Levels, Frequency and Route of Exposure. If a single bioassay is to be used both for detection and for risk assessment, at least three dose levels in addition to the concurrent control group are recommended. The question of what maximum dose should be administered may be the most controversial issue concerning bioassays *(13,19,33)*.

The highest dose currently recommended is that which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's normal life span due to effects other than carcinogenicity *(19)*. This dose, sometimes called the maximum tolerated dose (MTD), is estimated in a subchronic study (usually of 90 days duration) primarily on the basis of adverse pathology signs, toxicity, mortality, and pathology criteria. The MTD should not produce toxicity of a severity that would interfere with the interpretation of the study. Nor should it comprise so large a fraction of the animal's diet that the nutritional composition of the diet is altered, leading to nutritional imbalance.

The MTD was initially based on a weight gain decrement observed in the subchronic study; *i.e.*, the highest dose that caused no more than a 10% weight gain decrement *(10)*. More recent studies and the evaluation of many more bioassays indicate refinement of MTD selection on the basis of a broader range of biological information *(19)*. Alterations in body and organ weight and clinically significant changes in hematologic, urinary, and clinical chemistry measurements may be useful in conjunction with the usually more definitive toxic, gross or histopathologic endpoints. The 1984 Report of the NTP Ad Hoc Panel (19) contains a helpful discussion of the use of such corroborative information to more reliably determine the MTD (see pages 126-145 of the NTP Report). The rationale for the dose selection, including the data elements used, should be clearly stated in the final bioassay report.

The Report of the NTP Ad Hoc Panel also discusses the kind of data which may be helpful in selecting the spacing of doses below the MTD (page 126 and 128). Such doses are ordinarily simple fractions of the MTD; *e.g.* (1/2, 1/3, etc.). Dose selection is influenced primarily by one or more of these types of information: 1) observations in the subchronic studies, particularly the dose-response curve; 2) pharmacokinetic data, particularly the presence of non-linear behavior and the doses at which this occurs; and 3) anticipated human exposure levels or relevant exposure guidelines (such as TLV's).

The important contribution of pharmacokinetic studies to the selection of doses below the MTD is the information such studies may provide on the presence of dose-dependent and time-dependent processes affecting the disposition of substances in the body *(19,35-41)*. Such information may also identify changes in the internal concentrations of the chemical or its metabolites that are not directly proportional to administered dose, and may also indicate if accumulation of the chemical or its metabolites occurs with repeated exposures. To be of maximum use in the dose selection process this information should be obtained early, before or during the prechronic phases of the bioassay. However, because pharmacokinetic data may also reveal distinct changes in the animals' treatment of the chemical at low as compared to high doses, such data may also aid in the interpretation of the bioassay.

Because of cost, a single long-term study may be utilized to obtain data on chronic toxicity, on carcinogenic potential and for carcinogenic risk assessment. The present discussion envisions the combination of both the qualitative objective of a carcinogen bioassay, *the detection of carcinogenic potential*, and the quantitative objective, *obtaining dose-response data for risk assessment*, into a single bioassay. If only one of these objectives is sought, it may be advisable to select the doses differently. The purpose of using the MTD is to provide maximum opportunity for the detection of a neoplastic response. The purpose of several lower doses is to provide adequate information on the shape of the dose-response curve for risk assessment and to ensure a meaningful comparison with the controls even if the MTD was unfortunately selected at too high a level. The pathological responses observed in the subchronic study and the slope of the subchronic dose-response curve should aid in the selection of the range and number of doses for the long-term study. For example, a steep dose-response curve would suggest closer spacing of intermediate doses than a shallow dose-response curve. The existence of metabolic saturation (as indicated by pharmacokinetic data) at doses well below those identified by pathological criteria suggest a spacing of doses designed to determine both whether the highest dose has any carcinogenic effect and to adequately define the dose-response curve for the saturable process. This may require additional doses. Generally four doses including the control, (occasionally three) will be necessary to adequately define the dose-response curve, assuming an appropriately chosen MTD. Since the MTD is an estimate at best, the value of additional doses is generally difficult to judge. If the estimated MTD eventually produces moderately high or excessively high tumor incidence, additional lower doses may aid in defining the shape of the dose-response curve and may even salvage a study when the MTD is overestimated. If the estimated MTD produces no tumors, or a low incidence of tumors, the additional doses will have been unnecessary as regards carcinogenicity but can help establish safe non-toxic doses. As indicated above, the best guide to the number of doses is the acquisition of knowledge on the pathological and pharmacokinetic criteria upon which a sound, scientific judgment can be based. The National Toxicology Program (NTP) has published more detailed recommendations for prechronic testing and dose selection from its Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation *(19)*. Interruptions in the administered dose may permit some cellular repair and reduce the sensitivity of the test. Therefore, if the chemical is administered in the drinking water or mixed in the diet, it should be continuously available. The frequency of exposure may vary according to the route chosen or may be adjusted according to the toxicokinetic profile or stability of the test substance (see Sec. 2 above). Protocols for inhalation or for dermal exposure are usually subject to special constraints *(14)*.

The route of administration used for the bioassay is critical for both its qualitative and quantitative objectives - but in different ways. If the route of administration results in the absorption, distribution and metabolic activation (if required) of the substance, it is reasonable to regard the test as relevant for a *qualitative* demonstration of human carcinogenic hazard. This comparison is obviously most directly made when the route used in the test and the route of human exposure are the

same, but as long as the criteria above are satisfied, the results of animal studies are generally considered qualitatively meaningful.

If, because of its palatability, solubility, stability or volatility, a substance can not be given in feed or water, oral gavage may have to be considered. This is clearly less desirable, however, since single large boluses can result in absorption and pharmacokinetic patterns different from those anticipated from human exposures (see also Section 2). Sometimes, the use of gavage can be avoided by gradually increasing dietary concentration of the test substance to gain acceptance, by altering other dietary components to increase the palatability or by microencapsulation.

Certain site specific tumors, *e. g.*, bladder carcinoma following bladder implantation and subcutaneous sarcomas following injection, may not be relevant for human oral exposure. The presence of tumors remote from the site of administration and a knowledge of site-specific metabolism play a significant role in the final evaluation. Some routes of administration may fail to provide adequate metabolic activation or exposure of target tissues and therefore lead to false negative results *(14)*. Such data require careful evaluation.

When an assessment of human risk is desired, it is desirable to obtain sufficient data to permit a reasonably accurate estimate of the dose of the carcinogen reaching the target tissue. In some instances, *e.g.*, for substances used on the skin, this may require a bioassay to detect tumorigenic potential and a separate study of the substance's permeability across the skin to measure the amount absorbed. In inhalation studies, this may require a separate study for determining the amount of inhaled material deposited on, or absorbed by the respiratory tract.

5. Duration of Study. Test animals should be exposed for the majority of their normal life spans. While there are certain animal test systems which offer the possibility of inducing cancer within only a few weeks or months, such systems at the present time are useful mainly as research tools to explore specific, well-defined questions. They cannot be relied upon to test unknown substances for carcinogenicity and are insufficient as a primary basis for regulation.

Treatment is preferably begun as soon after weaning as possible and continued for the major portion of the animals' lifespans. This is at least 18 months for mice and hamsters and 24 months for rats. In some instances where the cumulative mortality at the planned time of sacrifice is still very low, *e.g.*, less than 10%, a longer duration may be appropriate. Some protocols call for treatment soon after birth (neonatal) or during fetal development (*in utero*). The rationale is based on the greater susceptibility of certain organ systems to carcinogens during their early development. However, there are logistical problems which preclude using neonatal or *in utero* systems for routine bioassays.

Termination of the study is ordinarily acceptable when the number of survivors in the low dose or control group is reduced to 20-25%. Generally, because of difficulties produced by naturally occurring tumors, long-term studies are conventionally terminated by week 100 for hamsters, 120 for mice and by week 130 for rats, regardless of mortality. When there is an apparent sex difference in response, each sex should be considered a separate study *(12)*. If the high dose group dies prematurely from obvious toxicity, this should not trigger termination of the lower dose groups or controls. A negative test is ordinarily accepted by regulatory agencies if: 1) no more than 10% of any group is lost due to autolysis, cannibalism or management problems; and 2) survival of all groups (per sex per dose) is no less than 50% at 80 weeks for hamsters, 96 for mice and at 104 weeks for rats *(15)*.

Rigid rules for termination are not helpful, the best guide is professional judgment, experience and careful observation of the condition of the animals. The longer the test continues, the greater the opportunity for the development of tumors *(42,43)*. On the other hand, the sensitivity of bioassays decreases with time, because of the natural appearance of age-related tumors in the controls. In theory, it is necessary to know both the incidence and growth rate of naturally occurring tumors and experimentally induced tumors at various organ sites in the sex and strain of animal used in order to determine the optimal time for termination. This information is ordinarily not available until the end of the test and while serial sacrifices are useful, they are considered too expensive for routine testing of chemicals.

6. Data Collection and Reporting. Animals should be checked carefully at least twice each day. Observations should be sufficient to detect onset and progression of all toxic effects, as well as to minimize loss due to diseases, autolysis, or cannibalism. Body weights should be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every four weeks thereafter. Loss of body weight should trigger careful clinical examination of the animal and its sacrifice, if necessary. Food intake should be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals, unless health status or body weight changes dictate otherwise *(15)*.

Clinical signs and mortality should be recorded for all animals. Special attention must be paid to clearly visible tumor development: the time of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor should be recorded.

The pathological examination, macroscopic, as well as microscopic, is the cornerstone of the carcinogenicity study. A thorough gross necropsy with subsequent selection of appropriate lesions for histopathology is mandatory. It is vital that the sampling among the test and control tissues be uniform so that no bias is introduced into the comparisons. Microscopic examination of both test and control tissues is required. While an all-inclusive microscopic examination of all tissues is theoretically desirable, the resource limitations may dictate a more selective approach such as the one recently proposed by the National Toxicology Program or earlier by the National Cancer Institute *(44,45)*. The quality, extent and completeness of the documentary record of the bioassay are of critical importance in establishing its validity for scientific and regulatory purposes. It is crucial that the physical evidence, *e.g.*, the original tissue sections and slides, is accurately prepared and maintained. Sponsors of bioassays that are to be submitted to regulatory agencies should be familiar with additional requirements of GLP's (Good Laboratory Practice) *(32)*.

II. INTERPRETATION AND EVALUATION OF LONG-TERM CARCINOGEN BIOASSAYS

A. Background

Several attempts have been made over the last 10 years to construct a suitable operational definition for a chemical carcinogen *(9, 10,13,14,46,47)*. Though none of these have succeeded fully, there is common agreement that a chemical carcinogen is a substance which induces cancer by some chemical/biological mechanism. A chemical carcinogen may be a substance which either significantly increases the incidence of cancer in animals or humans or significantly decreases the time it takes a naturally occurring

(spontaneous) tumor to develop relative to an appropriate background or control group. Either phenomenon is said to represent the effects of a carcinogen *(13)*.

The interpretation of carcinogencity data has evolved considerably in the last decade. In past years, there were no standardized protocols for testing carcinogens. Typically an identified carcinogen was used as a research tool to study the mechanisms of carcinogenesis, so that many experiments were performed with the compound. This intense study usually dispelled any doubt as to whether the substance was actually a carcinogen. This degree of confirmation gradually decreased as more of the experimentation turned from research on the process of carcinogenesis to detecting as many chemicals as possible that might pose a cancer risk to humans. For this latter purpose, which began in earnest in the mid 1960s with the "screening" bioassays conducted by NCI, it was necessary to devise "decision rules" by which to declare a chemical a carcinogen *(3)*. Since then, considereable progress has been made in refining basic principles and criteria to guide the interpretation of carcinogenicity *(4,5,14,15)*. Experience has taught that these criteria should be regarded as general guidelines in evaluating rather than rigid rules and that final decisions are best made after careful communication between pathologists, toxicologists and statisticians. Most useful to the process is the experience and the data derived from large numbers of recent tests using a uniform protocol.

With some oversimplification, the task of the pathologist and toxicologist is to decide whether a lesion is cancerous or pre-cancerous and whether it is related to exposure to the test chemical. The statistician, on the other hand, has the task of determining whether any observed tumors are more likely to have occurred by chance or as a result of treatment. Neither of these tasks is simple or completely independent of the other and, most importantly, each requires experience and judgment if sensible decisions are to be made.

B. Toxicological Issues in Bioassay Evaluation

1. Use of the Maximum Tolerated Dose (MTD). Largest doses (*i.e.* doses far exceeding human exposure levels) have been strongly recommended by several national and international bodies in order to overcome the inherent low sensitivity of bioassays *(14,15,19)*. These recommendations have been controversial because high doses may themselves produce altered physiologic conditions which can qualitatively affect the induction of malignant tumors. Normal physiology, homeostasis and detoxification or repair mechanisms may be overwhelmed and cancer, which otherwise might not have occurred, is induced or promoted. Normal metabolic activation of carcinogens may possibly also be altered and carcinogenic potential reduced as a consequence. If qualitatively different distribution, detoxification or elimination of the test chemical is produced at the highest dose, a toxic response at this dose may not be indicative of effects at low exposure levels. The cancers which arise from high doses of corticosteroids, estrogens, certain sulfonamide compounds and from some instances of bladder implantation may result from such "secondary" effects (*48*, and see Chapter 1). This concern is not easily resolved, for if the dose is not high enough, carcinogens may remain undetected by traditional bioassays.

The concept and operational definition of the MTD have undergone modification during the last several years in response to some of these concerns. The 1971 FDA Advisory Committee on Protocols recommended that: *"Testing should be done at doses and under experimental conditions likely to yield maximum tumor incidence" (9)*. However, as the use of these tests for human risk assessment increased, it became vital not only to detect carcinogens qualitatively (*i.e.*, avoid false negatives), but also to estimate effects at low dose levels. Both the National Cancer Advisory Board Subcommittee (NCAB) (1977) *(47)* and the Interagency Regulatory Liason Group (IRLG) (1979) *(14)* cautioned against the use of a dose so high that it produced *"unwanted toxic side effects"* (IRLG) or *"unphysiologic conditions [which] may in themselves enhance tumor formation"* (NCAB). Recent publications have emphasized the need to select the doses not only on the basis of the results of subchronic toxicity studies, but also on the basis of what is known about the pharmacokinetics and metabolism of the test substance *(13,19,33)*. Better techniques to observe and detect significant differences in metabolism and pharmacokinetics throughout the dose range used are being developed; these should help in a better determination of the MTD *(35-41)*. The desirable goal is that the dose used meets the objectives of maximally enhancing the sensitivity of the test without introducing qualitative distortions in the results.

2. Promoters vs. Initiators, Current Experimental Status. In Chapter 1 of this report, the evidence for the belief that cancer occurs through at least a two stage process consisting of initiation and promotion was discussed. The basic question of whether tumor promotion is a general feature of carcinogenesis or is only characteristic of some organ systems is still debatable, although more and more evidence for the initiation-promotion process in a variety of organs is becoming available (*49* and Chapter 1). The question naturally arises as to whether such promoting agents can reliably be distinguished from initiators by traditional bioassays.

A number of examples of promoting agents are well documented; most of the work on their mechanism has been done on skin, *e.g.*, the phorbol esters in epidermal carcinogenesis. Other examples are butylated hydroxyanisole in pulmonary carcinogenesis, phenobarbital in hepatocarcinogenesis and estrogenic hormones in breast cancer. Some known promoting agents also have weak tumorigenic activity and some are also initiators, *i.e.* complete carcinogens. Carcinogens may act as promoters at some tissue sites and initiators at others. It is very difficult both in principle and in practice to confirm the claim that a given chemical acts by promotion alone. If such a mechanism is postulated for a specific chemical, data on the purported mechanism at the affected tissue sites and dose response data would be needed to support the proposition.

3. Need for Biological Significance, Other Data. There is no simple or generic solution to the problems which arise when attempting to interpret carcinogenicity data. Over recent years, review groups charged with the responsibility to evaluate carcinogenicity data and come to some decision regarding the carcinogenicity of a chemical have recognized the need to consider all of the available scientific information which may bear on such a decision *(8,9,13,47)*. In addition to statistical significance (Sec. D), there should be biological significance as well. The use of a variety of biological information on dose response, tumor progression, tumor latency, tumor multiplicity, findings in other studies, etc. can add confidence to the final assessment. Other often useful information includes historical data on control animals, information from *in vitro* mutagenicity or neoplastic transformation systems, toxicological information which might indicate that

the organ or tissue which is at risk for carcinogenicity appears to be a target for the toxicity of the compound. Mutagenicity, DNA repair and neoplastic transformation studies can sometimes be used in aiding judgments on carcinogens *(50)*. For example, if the data indicating carcinogenicity are of only marginal significance, negative findings in properly designed and well-conducted *in vitro* tests, depending upon their relevance to the specific situation, may lead to a conclusion that the chemical is probably not carcinogenic. On the other hand, were the results from *in vitro* testing clearly positive, and if evidence existed to show that the organ in which the cancer question arose was also the toxicological target of the chemical, the conclusion is likely to be that the chemical is carcinogenic. To make these judgments, it is important that there be a good interaction and deliberation among scientists from different disciplines.

4. Human Relevance of Rodent Tumors. The inference stated earlier, "that in the absence of adequate data on humans it is reasonable to regard chemicals that are carcinogenic in laboratory animals as if they were also carcinogenic to humans," should be given great deference as a general principle. But this need not foreclose further scientific inquiry in individual cases if experimental evidence on the mechanism of tumor formation in the animal is available. As science advances, and more sophisticated studies are done, it may become possible to demonstrate the existence of unique susceptibilities to chemical carcinogenesis in rodents that have no relevance for humans. All the available scientific information should be used in attempting to reach the most likely correct scientific conclusion. The inferential relevance of observed animal carcinogenesis to potential carcinogenic risk in humans is obviously justifiable in the absence of such mechanistic information.

C. Issues of Pathology in the Interpretation of Tumor Data

1. Tumor Number, Type and Site in the Assessment of Incidence. As mentioned earlier, a carcinogen may be defined as a substance which increases the incidence of cancer above the background rate (Section II, Part A). However, from a practical point of view, the most important question is: How does one estimate or deduce cancer incidence from tumor data? For instance, should all cancers in the animal be combined and the total number of tumors in treatment groups compared to total cancers in the untreated controls? Alternatively, should carcinomas be separated from sarcomas since they are derived from different tissue? Should the comparisons between treated and controls be restricted to specific organ sites and, if so, should all tumors be combined, or only certain types? Other questions are: should benign and malignant tumors be separated or combined; if tumors occur at multiple organ sites, can they be combined and how should it be done; should cancers which shorten the life of the animal be separated from those which do not? These questions and many more must be answered before cancer incidence(s) can be estimated. Unfortunately, there is no universal agreement among experts in the field relevant to the rules for calculating cancer incidence that is applicable to "all" carcinogens "all" of the time. Generally, most experts agree that the incidence of total tumors at all organ sites is not a very useful expression of cancer incidence, nor is the calculation of the incidence of total benign or total malignant tumors. Most useful appears to be the number of histologically unique tumors at specific organ sites *(51)*.

The grouping of lesions for evaluation should be based on commonality of histogenetic origin. Therefore, sarcomas should not be combined with carcinomas for the purpose of establishing a value for the incidence of cancer at a specific organ site. It is often necessary, at least in the judgment of many pathologists, to combine certain benign tumors with malignant ones occurring in the same tissue and at the same organ site. This practice can make the total neoplastic response (benign and malignant) clearly significant despite the lack of statistical significance in the tumors diagnosed as malignant. These pathologists believe that truly benign tumors in rodents are rare and that most tumors diagnosed as benign really represent a stage in the progression to malignancy. For some tissue sites, this view is widely accepted. Examples of this are adenomas versus adenocarcinomas in the pituitary, thyroid, lung, kidney tubules, and according to some experts, in mouse liver. In each of these cases, it is argued that the judgment of the pathologist as to whether the lesion is an adenoma or an adenocarcinoma is so subjective that it is essential they be combined for statistical purposes. It is also argued, in these specific cases, that the adenoma is a precursor of the adenocarcinoma. Indeed, the Subcommittee on Environmental Carcinogenesis of the National Cancer Advisory Board recommended in 1976 that these lesions be combined for statistical purposes *(47)*. Most U.S. regulatory agencies have followed this recommendation. Ordinarily the tumor or cancer incidence is calculated as the number of tumor-bearing animals having tumors at a specific organ site divided by the total number of animals that survived long enough on experiment to have been at risk for that specific type of tumor. For reasons discussed in the statistical part of this section, life shortening tumors should not be combined with non-life shortening tumors.

2. Time-to-tumor. A positive result in a carcinogenesis bioassay can be based on evidence of a substantially decreased latency period, as well as on the induction of an increased incidence of malignant tumors. A good discussion of the precautions that should be observed in order to establish decreased latency is given in the 1979 IRLG report *(14)*. Such data, in conjunction with incidence data, can be useful to distinguish between the relative potencies of carcinogens.

3. Problems in Tumor Diagnosis. A major problem facing those who must make either scientific or public health policy decisions based on carcinogenicity data is that the diagnosis of pathological lesions is subjective and pathologists may disagree on diagnosis. Frequently, the disagreement is not as serious or far-ranging as it may appear to non-pathologists. The disagreement may be focused on an issue where neither pathologist is absolutely certain and each is forced to offer his "best opinion." In practice, for most compounds, NCI and NTP have used panels composed of 2 to 4 pathologists to review and analyze the lesions that have been observed *(44,51)*. This procedure helps to provide consistency in diagnosis, but it may not solve all the problems. For instance, most pathologists do not review the microslides "blind." They know which slides come from control animals and which from treated animals. The extent to which this information leads to bias in diagnosis is not known *(44)*.

A common problem with the interpretation of pathological data concerns the selection of the tissues at necropsy, how the tissues were prepared, the slides mounted and so on. For instance, a few years ago most investigators did not open the skulls and carefully examine the brain. In other cases, only brains appearing abnormal were examined in detail. Currently, the

brain as well as other tissues such as nasal turbinates are routinely examined histologically *(42,51)*, though the techniques vary somewhat. As a consequence, spontaneous tumors of these tissues are now being reported. Depending upon how extensively these tissues are being sectioned for histological analysis the observed incidence may vary from low to moderately high. Such modifications in the pathology protocol, if not recognized and understood, could lead to serious errors in judgment concerning the carcinogenicity of a chemical.

Critical to decisions about carcinogens is the biological significance and human relevance of certain types of tumors, particularly the liver tumors in the mouse. This matter has been the subject of heated debate for the past 15 years. Some scientists are certain that the mouse liver is overly sensitive and will respond to almost any toxic insult by developing cancer. Other scientists are just as certain that the mouse liver is a reliable indicator of carcinogenicity and as good a predictor of potential human risk as any indicator available. In one review, 61 of 85 chemicals (73%) that increased the incidence of liver tumors in mice also induced tumors in other tissues of mice and/or in rats *(27)*. Some toxicologists believe that part of the problem stems from work on C3H strains of mice where the background liver tumor incidence is high and false positive errors are possible (see below Sec. D). Generally, there is consensus that the mouse liver model in principle does have significance in terms of human risk, but unambiguous diagnosis between "benign" or "hyperplastic" liver nodules and malignant neoplasia remains elusive and there is no apparent scientific consensus. A recent review of this issue has emphasized the need for judgment on a case-by-case basis and the possible relevance of other toxicological information *(52)*.

In addition to liver tumors, other tumors, including lymphomas in the mouse, which appear to be of viral origin, have been questioned as to their relevance to human cancer. As a general matter, toxicologists must question the relevance to humans of any experimental tumor which has a known viral background where the virus may be unique to the animal. This includes a variety of lymphomas and sarcomas in rats and mice, as well as mammary tumors in the mouse. Likewise, the relevance to human exposures of the induction of bladder cancer in rodents which are shown to have bladder stones and crystaluria only at high doses of the test substance is questionable.

D. Evaluation of Statistical Significance

1. Statistical Tests and Procedures. For the analysis of tumor incidence data, a widely-used method for comparing experimental and control groups is Fisher's exact test *(53)*. This analysis is generally carried out in conjunction with a Cochran-Armitage trend test *(54,55)* which examines the relationship between tumor incidence and dose. The trend test has the advantage of utilizing cancer incidence data for all doses and as a result is somewhat more sensitive than pairwise comparisons to the detection of carcinogenic effects.

The statistical procedures mentioned above for the analysis of tumor incidence data do not take survival differences into account *(31)*. This can be a problem with chemicals that produce a life-shortening effect. Although "survival-adjusted" tumor incidence analyses *(31,56,57)* are more complex, they have the advantage of adjusting for intercurrent mortality and of being sensitive to shortened latency period as well as to increased tumor incidence. These procedures require the determination of whether tumors in individual animals are "lethal" or "incidental" with respect to the underlying cause of death. This determination may be difficult if not impossible to make for many animals, but experimentalists should try to distinguish in their records between lethal and incidental tumors.

While it is customary practice in the conduct of bioassays to regard an increased tumor incidence that is statistically significant (*e. g.* $p<0.05$) as reasonable assurance that the effect is real and not due to chance alone, the final judgment regarding a compound's carcinogenicity is rarely based on a single finding of statistical significance *(57)*. One must be assured that the effects observed are biologically significant as well. Other factors that must be taken into account include: 1) the reproducibility of the effect in other doses and/or in other sexes or species; 2) the historical incidence of the tumor in question; 3) the survival histories of dosed and control animals; and 4) evidence of hyperplasia, metaplasia or other signs of an ongoing carcinogenic process.

The 0.05 p-value is a reasonable statistical bench mark with a history of use in the bioassay field. It would be imprudent to disregard it as an index of significance without good reason. It would be equally unwise to regard it as an absolute requirement or a *sine qua non* without considering the weight of biological evidence. For example, doubling or tripling the incidence of a tumor that occurs at low incidence in the controls may not be statistically significant, but may indicate a biological effect that should not be dismissed. Similarly, the finding of nominal statistical significance ($p=0.05$) at a single tumor site may be less important to the final evaluation than knowledge of the target site and the lack of consistency with related biological findings. As stated by IARC (15):

"The p-value from a good experiment is an objective fact, subject to public agreement. The weight to be given it and to the available pieces of information is not."

2. Problem of False Positives and False Negatives. Because of the time and expense involved, most chemicals, if tested at all, are tested in only one bioassay. It is vital that this test have good sensitivity since otherwise many true carcinogens would remain undetected (a false negative). The test must also possess a high degree of *specificity* since there are economic losses as well as disincentives for testing if safe, useful substances are mistakenly declared carcinogens (a false positive).

a. False negatives.

The typical bioassay, due to inherent limitations (low number of animals and biological variation) cannot reliably detect an increased tumor incidence of much less than 10-15% over background. High test doses are one way around this limitation, but as discussed above (Sec. II, Part B, 1), this can introduce confounding factors if the dose is too high. In addition, the possibility always exists that for a specific substance, the most sensitive species may be inappropriate for qualitative extrapolation to humans. Until more is known concerning the mechanism of cancer and the similarity in response between man and animal, this uncertainty will persist.

Confidence in an apparently negative bioassay increases with: 1) the number of animals used; 2) the adequacy of the doses; 3) the extent to which its duration approaches the animals' expected lifetime; and 4) the adequacy of the gross and histological examination of both control and treated groups. Corroborative evidence such as experimentally consistent biological results in different species or sexes, or at different doses, strengthens the likelihood that the bioassay is correctly interpreted. Rigid rules or definitions are

not very useful. The ultimate decision must be based on the knowledge of experienced pathologists and toxicologists, the weight of corroborative evidence and a careful statistical evaluation.

The spontaneous tumor incidence can be of considerable importance in the interpretation of results from carcinogenicity studies. If, for example, the effect of a chemical is to double or triple the background tumor incidence, tissue sites with low spontaneous tumor rates are more likely to yield false-negative results than are sites with high spontaneous tumor rates. For example, if a tumor is a rare tumor even a slight increase in incidence may be biologically significant and may be considered adequate evidence of carcinogenicity *(53)*. This factor must be taken into account in the overall evaluation of the data. For such tumors (*e. g.*, with spontaneous tumor rates of 1% or less), the utilization of historical control data may be particularly useful in increasing the sensitivity of the study for detecting carcinogenic effects. All recent work emphasizes the fact that the evaluation of the bioassay is not a simple nor routine statistical exercise, but a multidisciplinary process requiring the interaction of toxicologist, pathologist and statistician.

b. False positives.

Appropriate precautions in the design and evaluation of bioassays can minimize the chance of false positive results. The test substance must be free of carcinogenic contaminants and appropriate doses and routes of exposure must be used. However, careful attention to these and to other factors cannot eliminate entirely the possibility of either false positive or false negative results. These problems are fundamental to the process of drawing inferences from observed sample data.

Many investigators familiar with data from bioassays believe that in practice the overall false positive rate does not greatly exceed 0.05 *(53,54)*. Others are not as certain, and all admit that this is an important problem area that must be considered in the interpretation of carcinogenesis bioassay data. The very effort to be as thorough and as complete as possible in the selection of tissue at necropsy, and in the detection of responses from various doses, increases the chance for a false positive error. Typical bioassay protocols require sectioning and analysis of tissues from 20-30 sites in two-species, in two-sexes, and, at the least, two dosage levels. It has been suggested that the multiple tests for significance applied to these many sites produce an unacceptably high overall false positive rate. (The argument is that if 'n' independent tests are conducted at the 'a' significance level, the probability of finding a significance somewhere [the false positive rate] is $[1-(1-a)^n]$. For $n=20$ and $p=0.05$ for a single dose-sex comparison, this probability is about 0.64.)

However, recent investigators have shown that this argument overestimates the likely false positive rate of the bioassay. Gart, *et al. (52)*, using historical incidence rates for B6C3F1 mice, found the probability of at least one significant result at the 0.05 level at some site in at least one sex was only about 8%. In a commonly used strain of rat (F344) the same probability was approximately 21%. These findings are well below the 64% value cited above. One reason for this difference is that tumor incidences are discrete count data, and in this situation, the actual significance level of test procedures comparing tumor rates is always less than the nominal level, often considerably less.

This is particularly true for tumors having a low spontaneous incidence. Even the estimated false positive rates reported by Gart, *et al. (53)* may be too high, since (as noted earlier) the final judgment that a compound is carcinogenic is rarely based on a single isolated "significant" increase in tumor incidence. Generally more stringent evidence is required, such as the reproducibility of the effect in other doses and/or other sexes or species. For example, if a chemical is judged carcinogenic only if it is positive ($p<0.05$) at some tissue site for *both* the low and high doses, the overall false positive rate for a two-sex, two-species experiment has been estimated to be 5.1% *(59)*.

In a recent examination of 25 NTP feeding studies, a simple statistical rule was derived by Haseman *(58)* which appears to mimic closely the scientific judgment process used in these experiments. This "rule" was as follows: Regard as carcinogenic any chemical that produces a high-dose increase in a common tumor that is statistically significant at the 0.01 level or a high-dose increase in an uncommon tumor that is statistically significant at the 0.05 level. The overall false positive rate associated with this particular decision rule (which appears to approximate closely the overall evaluation process) was estimated by Haseman and found to be no more than 7-8% for the current NTP two-sex, two-species protocol *(60)*.

In summary, in the interpretation of tumor incidence data an investigator should be aware of the false positive issue. In the overall evaluation process, one should be guided by (but not rely exclusively upon) the statistical significance of an observed tumor increase. This awareness will help minimize the likelihood of a false positive result.

3. Use of Historical Controls. It is extremely important for the interpretation of a bioassay that the variability of the incidence of spontaneous tumors in the strain of animals used be established with the highest precision possible. These variations present problems in interpreting the results of bioassays. NTP has recognized this problem and has continued to accumulate data from untreated and corn-oil gavage control groups for the strains of animals used *(25,26)*. With such data, the toxicologist may conclude that a study yielding statistical significance is not biologically significant or conversely that an effect is real, even though there is no "significant" difference between test and concurrent controls. Of 27 bioassay study reports issued by the NCI from 1978-1980, historical controls were used in 14 studies to show that an apparent increase of a specific tumor was not related to treatment *(60)*. In 13 studies, the use of historical controls showed that an increase in tumors was related to treatment. Historical control data can be valuable when used appropriately, especially when the differences in incidence rates between treated and concurrent negative controls are small and can be shown to be within the anticipated historical incidence. However, the use of historical control data is not without its own problems. Over the course of time, the thoroughness of pathologic evaluations has improved and pathologic diagnosis has evolved and nomenclature has changed. There is also the possibility that the genetic susceptibility of the strain has shifted. The sources of variability in historical control data should be identified and, if possible, controlled. Obviously one has more confidence in the most recent historical control data from the same laboratory conducting the current study than in a compilation of pooled older data from other laboratories. Several procedures have recently been proposed for utilizing historical control data in a formal testing framework *(60-63)*. The relative merits of these methodologies are currently being investigated by the NTP.

III. SUMMARY

Although the identification of carcinogenic substances has long been of interest to the scientific community, until the 1960s the focus of most studies was research, not testing for substances which may pose a public hazard. The National Cancer Institute, and later the National Toxicology Program, have conducted a number of test-oriented studies, the chronic bioassays, and have also attempted to standardized many important parameters in conducting these studies. Type and number of animals, dose level and route, and study duration are fairly uniform in an effort to make the data base as comparable as possible from test to test.

Certain issues remain as problems. One of these is the use of the maximum tolerated dose (MTD) in long-term studies and the appropriateness of dose route, schedule, and length of exposure. Use of the MTD, if not an ideal solution to the problem of bioassay sensitivity, is appropriate if it is properly determined. Another problem is the interpretation of tumor data. This includes tumor number, type, time to tumor, tumor diagnosis, etc. and the significance of certain tumors. General guidelines have been recommended, with the proviso that they are to be used in conjunction with sound judgment.

Furthermore, although several methods of statistical analyses of long-term test results have been developed, the questions of false negatives and false positives and the use of historical controls, suggest that the evaluation of a long-term test is not a routine statistical exercise, but is instead a multidisciplinary process requiring the interaction of toxicologist, pathologist, and statistician. The utilization of long-term animal studies for quantitative human risk assessment has accentuated and focused attention on the real scientific uncertainties involved in high-to-low dose and animal-to-human cancer risk extrapolations. Nonetheless such animal studies, with all their limitations, remain the best way of predicting effects in humans when epidemiological data are unavailable.

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Chapter 4—Current Views on Epidemiological Methods

I. INTRODUCTION

Epidemiology is generally defined as the study of the distribution and determinants of disease in human populations, and thus it involves two major approaches *(1)*. Descriptive studies examine the "distribution" of disease and are usually employed to generate etiologic hypotheses, while analytical studies are used mainly to test hypotheses and identify the "determinants" of disease. A primary objective of epidemiology is to identify and quantify relationships between exposure to environmental agents and deleterious health effects. These associations may lead to causal inferences *(2)*, which in turn provide the basis for instituting preventive measures for various diseases.

II. STRENGTHS AND LIMITATIONS OF EPIDEMIOLOGY

A. Strengths

In contrast to studies in other biological systems, epidemiology directly evaluates the experience of human populations and their response (risk of disease) to various environmental exposures and host factors. Thus, it is often possible to evaluate the consequences of an environmental exposure in the precise manner in which it occurs and will continue to occur in human populations. This includes such important considerations as dose, route of exposure and concomitant exposures to other exogenous and endogenous factors. Through epidemiological studies human cancer has been linked to a number of lifestyle and other environmental hazards, including tobacco products and alcohol, ultraviolet and ionizing radiation, certain occupational and medicinal chemicals, dietary factors, and some infectious agents *(3-5)*.

Epidemiology has played a central role in detecting carcinogenic exposures, and it has complemented studies in laboratory animals in clarifying the carcinogenic potential of specific agents *(6)*. Another strength of the epidemiologic approach is its ability to provide insights into the mechanisms of human carcinogenesis. Thus, epidemiological observations have complemented experimental evidence that carcinogenesis is a multi-stage process, and that many cancers may result from the cumulative effect of environmental and host factors that accelerate or retard the transition rates at various stages of carcinogenesis *(7)*.

B. Limitations

Although epidemiology is the only means of assessing directly the carcinogenic risks of environmental agents in humans, the method has several limitations that are difficult to overcome *(1,8)*. One problem is that evidence of an environmental hazard is usually obtained from persons with high or intermediate levels of exposure. Just as for studies in laboratory animals, detecting causal relationships at low exposure levels is difficult, since the observed associations with disease are usually less pronounced and may have alternative explanations, including those related to chance, errors, biases or confounding variables. To provide a valid basis for risk estimates, large numbers of human subjects are often needed, especially if the exposure is low or rare, or if the excess risk is small compared to that of the baseline incidence rate. Another obstacle to epidemiology is the long latency period between exposure and the development of cancer. This complicates the detection of relationships and, of course, makes it impossible to identify the carcinogenic risks to humans of agents newly introduced into the environment. Another common problem in epidemiology is that of exposure assessment. Often the specific exposure of interest cannot be measured directly so that surrogate measures must be used (*e. g.*, occupation, place of residence). Since exposure data are usually derived from historical records generated for other purposes or from the recollections of subjects, opportunities for either random or biased misclassification of exposure are frequently encountered. In addition, appropriate study groups are

often simply unavailable or inaccessible. Furthermore, it may be difficult to implicate specific carcinogens when the environmental hazards involve complex exposures to a variety of agents, the effects of which are difficult to disentangle. Still another difficulty is the inability of epidemiological studies to adjust for unknown risk factors, since control can be introduced only when the risk factors are already recognized. Thus, when a particular factor is related to exposure and disease outcome, it may be confounding and give the appearance of an association when in fact none exists, or it may inflate or decrease the magnitude of an association. In view of these difficulties, it is not surprising that epidemiological data exist for only a small proportion of the many chemicals that have been shown to be carcinogenic in laboratory animals.

III. DETERMINING CAUSALITY

In interpreting epidemiological findings, one is guided by the magnitude of the risk estimates, their statistical significance (likelihood of being due to chance), and the rigor of the study design to avoid various kinds of bias, including those related to selection, confounding, classification, and measurement *(2,9)*. A determination of causality in epidemiology is bolstered by dose-response relationships, the consistency and reproducibility of results, the strength and specificity of the association, its biological plausibility, and other considerations. Thus inferences from epidemiology, as from other methods of inquiry, are not made in isolation, but should take into account all relevant biological information. Although epidemiological and other observations can accumulate to the point that a causal hypothesis is likely, it is not possible to ever prove causality (in the strict sense, a hypothesis can only be disproven). Nevertheless, a causal hypothesis can be sufficiently probable, as in the case of cigarette smoking and lung cancer, to provide a reasonable and even compelling basis for preventive and public health action.

IV. EPIDEMIOLOGICAL INVESTIGATIONS

A. Descriptive and Correlational Studies

Descriptive (or demographic) studies are concerned with identifying the distribution or patterns of disease in populations *(1)*. It is a basic tenet of epidemiology that diseases, including cancer, do not occur randomly, but fluctuate according to factors such as age, sex, race, time and geographical location. The use of rates as measures of disease frequency is fundamental in describing patterns of cancer among these population groups. Prevalence, incidence and mortality rates of cancer define the levels of risk prevailing in different populations and permit comparisons between groups. Descriptive surveys of cancer occurrence have been valuable in stimulating etiological hypotheses and providing direction for analytical studies, which are then necessary to establish whether risks are associated with particular exposures *(10)*.

Thus, important leads to etiology have come from population-based cancer surveys, which have revealed substantial international variations in cancer incidence, shifts in risk among migrant populations, changes in risk over time, and geographic peculiarities from mapping cancer mortality at the county level *(4)*.

Descriptive studies may utilize the correlational (or ecological) approach, in which the rate of disease in a population is compared with the spatial or temporal distribution of suspected risk factors *(10)*. This type of study may be particularly helpful in developing or refining hypotheses about carcinogenic risks, but falls short of establishing causal relationships. Correlational studies have the advantage of being much less expensive and time-consuming than analytical studies, because they often utilize mass statistics previously collected for another purpose *(9)*. The primary weakness of such studies, as with descriptive studies generally, is that data are collected on populations, rather than individuals. In other words, the rate of disease and the prevalence of exposures to variables of interest are known for various population groups, but information on the exposure status of persons who have the disease and those who do not within each population is not known. Thus, one cannot infer from the correlations of the population levels that the exposure of concern is associated with the risk of developing disease within each population *(9)*. For example, in early surveys of lung cancer, the international variation in mortality rates and temporal increases among males appeared consistent with the reported patterns of cigarette smoking, but these correlations by themselves may have been circumstantial rather than causal, since a variety of other exposures (*e. g.*, occupational hazards, air pollution) also varied concomitantly with the patterns of lung cancer. It took the analytical studies that pursued these leads to establish the cause-and-effect relationships between smoking and lung cancer. Correlational studies also may provide supporting evidence in evaluating relationships detected by analytical studies or laboratory data. This is illustrated by the more recent temporal increases in lung cancer among females, who have lagged about 20 years behind males in their adoption of smoking habits. Another example is the temporal variation in endometrial cancer incidence, showing a rise and fall in rates associated with the usage of estrogenic drugs for menopausal symptoms *(11)*. Because correlational studies deal with aggregate exposures and disease occurrence at the population level, they are also often seriously limited by the imprecise measurements of exposure and the many potentially confounding variables. However, occasionally the correlational approach may provide evidence that strongly suggests a causal relationship, as with aflatoxin, which has been linked to primary liver cancer based on concomitant geographic variation with the intake of contaminated foodstuffs.

B. Analytical Studies

In order to test etiological hypotheses and to identify and quantify carcinogenic risks to man, it is necessary to conduct analytical epidemiological studies *(9-10)*. These studies are the principal means for determining the human health hazards of specific environmental exposures and agents. In contrast to descriptive surveys, data are obtained on disease occurrence and putative risk factors for specific individuals, using mainly the case-control or cohort method. Thus, by grouping exposed individuals and comparing them to those unexposed, after controlling for all other relevant variables, the risk of disease associated with exposure can be estimated. While it is important not to impose unnecessary constraints on epidemiological investigation, there are some methodological guidelines to consider in designing a study. In particular, the study groups should be sufficiently large, and the time intervals between initial exposure and tumor onset sufficiently long, to identify the lowest excess risk considered important to detect. Reliable and valid estimates of exposure should be sought, with quantitative measurements to permit dose-response evaluations.

Studies should be designed in a manner that minimizes potential sources of bias, and permits detection and

control of confounding variables. Because the putative exposure may act either at an early stage or at a late stage of carcinogenesis (or both), it is possible to provide insight into the mechanisms of action by examining risk in relation to several temporal aspects of exposure. The studies should also strive to identify interactions of a particular exposure with other risk factors that may contribute to the carcinogenic process.

Analytical epidemiological investigations are essential to achieve a better understanding of the causes and means of preventing cancer. These studies cover a broad range of exposures with special relevance to public policy. Occupational studies have been a time-tested means of identifying carcinogens, but they require further emphasis to assess industrial hazards suspected on the basis of experimental, clinical, and field observations. Radiation studies also need increased emphasis to clarify the effects of low-level exposure and the shape of the dose-response curve. Drug studies have been useful both for direct evidence of risk associated with taking certain medications and also for insights into mechanisms of human carcinogenesis. They require an expanded effort to evaluate the late effects of estrogenic compounds, immunosuppressive and cytotoxic agents, and other medications suspected of having carcinogenic activity. Because of increasing clues to nutritional risk factors, emphasis is needed to clarify the role of dietary components including fat, fiber, micronutrients, trace elements, and food additives as well as cooking practices. The influence of general environmental pollutants remains an epidemiological challenge and requires more intensive evaluation through analytical studies, some of which may integrate appropriate environmental and body-burden measurements. Finally, multidisciplinary projects combining epidemiological and experimental approaches to chronic disease have recently gained impetus, and should be encouraged to evaluate the influence of oncogenic viruses, dietary and metabolic factors, host susceptibility, general environmental pollution, and other causative factors that may continue to elude detection by traditional observational methods.

1. Case-control Studies. These studies start by identifying persons with a particular disease (cases) and a group of similar persons without the disease (controls). Information on past exposure to known or suspected risk factors is then collected from interviews, questionnaires, medical records, occupational logs, or other sources. The frequency of a particular exposure among the cases is compared with that in the control group, after making appropriate adjustments for other relevant differences between the two groups. If the proportion of cases with a certain exposure is significantly greater than that of the controls, an association between exposure and disease may be indicated. The case-control approach is especially well-suited to studying relatively rare conditions, such as most cancers, where the putative exposure is common in the general population (*e. g.*, menopausal estrogens and endometrial cancer), or when the exposure is rare but accounts for a large portion of a particular cancer (*e. g.*, vinyl chloride and liver angiosarcoma) *(12)*.

2. Cohort Studies. These start by identifying a group of individuals with a particular exposure and a similar group of unexposed persons and following both groups over time to determine subsequent health outcomes. The rates of disease in the exposed and unexposed groups are then compared. Information on disease frequency and other factors may be identified from medical records, occupational records, physical examinations, questionnaires, tumor registries, or death certificates. An association between exposure and disease may be indicated if the rates of disease are greater in the exposed group than in the unexposed group. These investigations may be based on current exposure and future health outcomes (prospective cohort study), but more commonly they utilize past exposure information and disease occurrence (retrospective cohort study). Instead of an unexposed comparison group, general population mortality or incidence rates (specific for age, sex, race, and calendar time) are often used to determine the expected number of cases of disease. This method assumes that in the absence of specific exposure the study group would have had the same probability of developing the disease as the general population, but differences in ethnic, socio-economic and other variables must be considered in evaluating the validity of this assumption. The cohort approach is used mainly when it is possible to evaluate heavy exposures in clearly defined subgroups of the population. Thus it has been especially helpful in assessing the carcinogenic risk from occupational hazards or medical exposures such as radiation and certain drugs.

The statistical measures of association most often used in analytical studies are the odds ratio and the relative risk. The odds ratio is usually associated with the case-control study and represents the odds or probability of disease occurrence in the exposed compared with unexposed individuals. An odds ratio of 1 indicates no association between exposure and disease, assuming that proper adjustments for confounding factors have been made. The relative risk is a measure of association in cohort studies and is defined as the ratio of the disease rate in the exposed group to that in the unexposed group. For this reason it is also known as the rate ratio, and it permits a direct estimate of the risk of disease associated with a particular exposure. When the disease is rare, when incident cases are collected, and when cases and controls are representative of the same populations, the odds ratio is a good estimate of the relative risk *(12)*. The magnitude of the odds ratio or relative risk is a measure of the strength of an association, although they are both subject to unknown or unmeasured biases which may distort their true value. Another term often used in epidemiology is the population attributable risk or etiological fraction, which is the absolute amount of disease contributed or caused by a specific exposure.

Both the case-control and cohort methods are characterized as having certain strengths and weaknesses, although they complement each other in the testing of specific etiological hypotheses. Case-control studies provide a more efficient means of studying rare diseases, with fewer individuals needed for study as compared with the cohort approach; a shorter time period for study completion and generally lower costs as compared with the cohort method; an opportunity to evaluate simultaneously several causal hypotheses as well as interactions (the extent and manner in which two or more risk factors modify the strength of one another); and a capacity to evaluate the effects of common exposures as well as those rare exposures which may account for a large proportion of the cases. On the other hand, the case-control approach has some problems in directly estimating the risk associated with a particular exposure, except in special circumstances noted above; in reducing certain biases (*e. g.*, selection, historical recall) that affect the comparability of cases and controls; and in providing detailed and precise information on exposures occurring in the past (1). Such investigations also, by definition, can only evaluate one disease or outcome at a time.

The advantages of cohort studies are their capacity to estimate directly the risks attributed to a particular exposure, since incidence or mortality from disease is actually being measured; to reduce subjective biases by obtaining information before the disease develops; to determine associations between a particular exposure and multiple health outcomes; and to evaluate temporal relationships such as latency period and duration of effect. However, cohort studies are usually expensive and complex undertakings. They require large numbers of exposed individuals, particularly when relatively rare events such as most cancers are being investigated; long periods of follow-up to accommodate the latency period for chronic diseases such as cancer; and special handling of problems associated with persons lost to follow-up and with biased estimates of risk as from the "healthy worker effect" of occupational studies *(1)*.

3. Intervention Studies. Also referred to as experimental studies *(7)*, these represent a third strategy of analytical epidemiology, which is especially useful in confirming causal relationships suggested by case control or cohort studies. This approach may be applied in programs designed, for example, to reduce cigarette smoking and alcohol intake, modify diet, control occupational pollutants, or evaluate candidate preventatives (*e. g.*, vitamin A supplements, hepatitis-B vaccine). Ethical considerations are obviously critical when developing this approach, and after intervention the statistical procedures resemble those employed for cohort studies.

V. BIOCHEMICAL EPIDEMIOLOGY

It seems likely that some limitations of cancer epidemiology may be overcome by incorporating laboratory methods in analytical investigations. This has been a valuable routine practice in infectious disease epidemiology for the past century. This approach, sometimes called biochemical or molecular epidemiology *(13)*, has only recently been developed in cancer epidemiology. There is current enthusiasm for these kinds of investigations, since they merge the strengths of observational human studies with newly developed experimental probes to derive information that could not be developed by epidemiology or laboratory study alone. The laboratory aspect may make it possible to define past exposures and subclinical or preclinical response to initiators, promoters, and inhibitors of carcinogenesis, or to evaluate host-environmental interactions. There is special interest at present in using this technique to clarify carcinogenic risks associated with nutritional influences or specific environmental agents that can be detected in tissues or body fluids. Opportunities are also available to assess specific host factors that influence susceptibility to carcinogenesis, including endocrine parameters, immunocompetence, and genetic markers. Techniques are being refined to detect and quantify particular carcinogens or their metabolites in tissues or body fluids through chemical analyses, mutagenesis assays or immunological detection techniques. It is already possible to measure the interaction of specific agents with cellular target molecules, for example, through adduct formation with proteins and nucleic acids, excretion levels of excised adducts, or markers of altered gene expression *(13)*. The task of identifying the effects of lifestyle and other environmental and host factors is obviously formidable. Biochemical epidemiology represents an innovative approach that may help to elucidate further the causes of cancer and the actual mechanisms of carcinogenesis.

VI. IMPLICATIONS OF NEGATIVE STUDIES

Epidemiological observations often provide regulatory agencies with health information which is helpful in establishing sound, defensible rules governing workplace exposures as well as exposure to general environmental contaminants. The clinical and laboratory observations, and subsequent epidemiological confirmation, linking hepatic angiosarcoma and exposure to vinyl chloride led directly to safeguarding of workers by regulatory limitation of permissible exposure levels. Although, as in other areas of science, epidemiological studies can never "prove" the absence of an association, sufficiently large and well-controlled studies that fail to detect a hazard can also be useful. Specifically, for the types of populations studied, for the doses and duration of exposure to the putative agent, and for the assessed time following exposure, likely upper and lower bounds on the estimates of risk can be made, as well as the statistical likelihood of the study to identify an effect. As an example, the results of a large collaborative study of bladder cancer and artificial sweeteners were interpreted as indicating that saccharin use was not a significant public health problem *(14)*.

The likelihood of a study to identify an effect, if one is really present, is referred to as the statistical "power" of the study. Its estimation involves consideration of the size of the study group, the number of subjects exposed, and the level of excess risk which is considered important not to miss. With this information, the power of case-control and cohort studies can be calculated and thus some index of confidence can be attached to the observation of no association. The statistical power of "negative" investigations should be routinely considered when such studies are reviewed.

Regulatory agencies are often in the position of making decisions not simply on the effect of an exposure on the "average" exposed population, but on the effects among particularly susceptible subgroups of this population (*e. g.*, the concern over the acute effects of air pollution on infants, the very old, and the infirm). The risk of malignancy following exposure to a carcinogen is rarely uniform across all subpopulations but is routinely modified by genetic constitution, demographic characteristics (*e. g.*, age, race, sex), and exposures to other substances. Such risk modifiers can act either to enhance risk, such as the capacity of cigarette smoking to multiply the risk of lung cancer associated with asbestos exposure, or to reduce risk, such as the recently emerging evidence that certain dietary factors may inhibit the carcinogenic process. Epidemiological data are particularly, and often uniquely, relevant to these issues. Because of this, analyses of risk among subgroups of an exposed population are particularly germane to regulatory agencies. At the same time, these types of analyses are challenging to interpret, since variation between groups can easily occur due to chance or the differential operation of some type of bias.

Because of the central importance of epidemiology in cancer risk assessment, it is important to develop and strengthen programs of epidemiological research, and to ensure the conduct of studies to look for and measure (if detected) health effects whenever relevant human exposure has occurred. Collaborative studies among Federal agencies and other groups are needed to evaluate urgent issues involving scientific, regulatory or public policy concerns, as well as to stimulate the epidemiological application of technical and data resources that are used by the government and other institutions for different purposes. Because of the

international peculiarities in cancer occurrence, collaborative studies with investigators in other countries should also receive greater emphasis to pursue a wide variety of etiologic leads. These national and international collaborative studies can occasionally profitably include intelligent combined analysis of data already obtained from existing studies. In addition, further statistical investigation is needed to develop and test multi-cause and multi-stage models of carcinogenesis, and to clarify the many issues involved in extrapolating results from experimental testing to the human experience.

VII. SUMMARY

Epidemiological investigations comprise one of the major strategies in creating the scientific base necessary for regulatory decision-making. Descriptive epidemiological studies, including ecological or correlational approaches are useful in generating and refining hypotheses about potential cancer risk factors. Well-designed, well-conducted, and well-evaluated analytical epidemiological studies of either the case-control or cohort variety can test such hypotheses and provide the basis for causal inferences that are especially useful for public health decisions. The strengths of these studies lie in their capacity to assess directly the carcinogenic risks of environmental agents in humans (often with the dose levels and manners of exposure that are most relevant) and in their ability to provide insights into mechanisms of human carcinogenesis that can assist in extrapolation of risk estimates to dose levels or similar agents not yet studied. The lack of evidence of a hazard from an epidemiological investigation can also be useful in that, within the scope of the study, a likely range can be determined for the estimates of risk, as well as an estimation of the statistical power of the study to have detected an effect, if one were really present. However, the epidemiological method is often hampered by the long latent period that exists between exposure to a carcinogenic agent and the development of cancer, by the inability to control for the confounding influences of unknown risk factors, by problems in assessing specific agents when the human exposures are to mixtures, by the frequent absence of appropriate groups for study, and by a variety of difficulties associated with accurate and unbiased historical exposure assessment or disease ascertainment. In addition, the epidemiological method shares in the difficulties encountered by experimental studies in the direct detection of relatively low-level risks. In general, the strengths and weaknesses of the epidemiological method form a useful complement to the strengths and weaknesses of laboratory approaches to carcinogenesis. This, coupled with the direct assessments of risks and the results of interventions allowed by epidemiology, makes a strong argument for the conduct of epidemiological studies and inclusion of their results in regulatory decision-making, whenever relevant exposure has occurred in human populations.

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CHAPTER 5--Chemical Exposure Assessment

I. INTRODUCTION

For the purpose of this document, a chemical exposure assessment is that process which seeks to define the quantity of a chemical which comes into contact, or may come into contact, with human populations.

This information then can be coupled with toxicity data to allow estimates of the potential risk from a carcinogen. Exposure assessments may also be used to identify and predict the effects of prospective control options or to measure the effectiveness of intervention activities designed to limit exposure. An assessment may address sources of human exposure, the intensity, routes and conditions of exposure, the frequency and duration of exposure, and the segments of population exposed. In certain simple situations an assessment may only need to consider well defined individual exposures that can be measured directly. In more complicated circumstances, broad systematic surveys and extensive mathematical computations may prove necessary *(1-3)*. Exposure assessment is often the most resource demanding portion of the evaluations of chemical risks performed by the various federal agencies.

"Many authorities agree that the weakest link in our understanding of the environmental health studies is our knowledge of human exposure." (4)

The great diversity of different sources and routes of chemical exposure complicates a review of this area. In the federal government, the source of a specific chemical exposure has served as a guiding principle in defining the responsibilities of different regulatory agencies. Separate responsibilities exist for exposure to chemicals through the ambient environment (air, water, and waste sites), food, drugs, consumer products, and the workplace environment. In each area an array of specialized estimating techniques, data sources, and expertise have been developed. The hundreds of thousands of possible combinations of factors which might be included in a specific exposure assessment make it extremely unlikely that any two exposure assessments of the same chemical will be identical. Each federal agency tends to focus on those aspects of exposure which are relevant to the laws which it administers *(5-25)*. This chapter addresses some of the common considerations in methodology, as well as the broad issues and difficulties that are relevant to exposure assessments. Three appendices provide more detail on aspects of exposure assessments dealing with food, consumer products, and potential carcinogens in the environment.

Despite the overall grouping according to source of exposure, it is important to

recognize that the path that a chemical follows from its source to the exposed target can be quite complex and may involve a number of different media. For example:

(a) chemicals released into one medium (*e. g.*, the air) may later transfer to other media (*e. g.*, soil or water);

(b) Low ambient levels of a compound may be magnified through bioaccumulation of the compound through the food chain;

(c) Chemicals may be degraded and new compounds formed during environmental transport and disposition;

(d) A chemical used in an article may be released into the environment years later when the article is disposed of as waste; and,

(e) Workers may carry a chemical home on their work clothing leading to a continuing exposure of their families.

II. METHODOLOGY OF EXPOSURE ASSESSMENT

There is a diversity of procedures for estimating exposure *(26)*. Although exposure estimating techniques are becoming more sophisticated at this time there is no universally accepted minimum set of specifications for the reliable estimation of exposure *(27)*. Exposure assessment is rapidly developing as a technical speciality, and even recent major reports on risk assessment only mention exposure briefly *(28-32)*. There are, however, a number of general approaches discussed below which may be applicable to the conduct of most exposure assessments.

As a useful simplification, exposure assessment studies can be divided among those that rely more heavily on direct measurement of chemical exposure and those where exposure is predicted, or "modeled."

A. Monitoring Studies

The direct monitoring approach is exemplified by the development of practical personal monitors which measure directly concentrations of chemicals in the air which individuals breathe *(33,34)*. An exposure assessment can be based on the range of personal exposure data generated by these monitors when used with an appropriate study group. However, it should be noted that the detection limits attained by personal monitors may pose limits in some studies and that most personal monitoring techniques currently provide information on average exposure but not on the time course or peak levels of exposure.

Monitoring of pollutants in the air and water has probably generated the greatest quantity of data among all exposure study approaches.

Some examples of these types of studies include:

(a) Carbon monoxide exposure has been examined extensively using personal and population monitoring *(35-42)*;

(b) Air pollution in the city of St. Louis was studied for several years *(43-44)*, producing over one million data points per day during much of the program;

(c) The plume from a power plant *(45)*, was studied intensively to define the transport and chemical transformation of the emissions from a single point source;

(d) Other techniques have been used to monitor emissions from entire cities to refine our understanding of the atmospheric transport of chemicals over large geographic distances *(46)*;

(e) Significant monitoring studies have also been conducted for a wide range of organic and inorganic compounds in marine, freshwater, and surface environments *(47-60)*;

(f) Extensive studies have been conducted to determine the levels of bioaccumulated pesticides and other chlorinated compounds in edible fish and shellfish.

In the workplace monitoring is the principle methodology for determining the levels of exposure to specific chemicals. The monitoring is usually site-specific, and generally is not used to estimate the total exposure of the entire workforce. The Occupational Safety and Health Administration (OSHA) and the National Institute of Occupational Safety and Health (NIOSH) have established data management systems for assimilating and aggregating data from workplace measurements. At times, these two agencies collaborate in the preparation and publication of occupational health surveys that describe exposures to certain chemicals across broad segments of an industry or occupation.

There is no monitoring system in place for determining the levels of exposure to substances in consumer products. Exposure estimates are generally based on *ad hoc* short-term surveys, laboratory studies and mathematical modeling. For example, monitoring systems have provided for many years extensive information on the levels of pollutants in the ambient air from the combustion of fossil fuel. No such parallel exists for these same pollutants generated from the combustion of fuel indoors. However, several monitoring studies of indoor air pollutants have now generated data on exposures to combustion products from gas or kerosene appliances in the home *(61-63)*.

Chemical contaminants in the U.S. food supply are monitored through the FDA's Total Diet Studies, an annual program which involves purchase and analysis of approximately 200 foods in grocery stores across the United States. Other monitoring systems used to measure exposure to chemicals in food are described in Appendix A entitled "FDA Information Sources for Exposure Estimates" (Sec. IV A).

Chemicals are also monitored in humans as a means of exposure evaluation *(64-74)*. In a national program, human tissue has been analyzed on a regular basis to monitor selected, persistent chemicals such as DDT and PCBs *(75,76)*. Tissue, secreta or excreta, or any combination of these, can be assessed and compared to an appropriate reference *(77)*. Such data can be used not only as a measure of overall individual exposure, but also as a measure of the effectiveness of regulatory actions when the monitoring is conducted for sufficiently long times to reveal trends. Chemicals or classes of substances for which there is some evidence that biological monitoring may be useful for detecting evidence of a substantial internal dose on an individual or group basis include: inorganic and organometallic substances, aliphatic, alicyclic and aromatic hydrocarbons, aromatic amines, ketones, aldehydes, phenols and pesticides *(77-80)*. In summary, monitoring can provide estimates of individual exposure and data to define the connection between the sources of a chemical and exposure to humans. Monitoring activities can encompass studies of the sources of chemicals, the ambient environment, the human environment of the home and workplace, the food and water consumed, as well as the doses absorbed and retained by the human body.

B. Modeling

Modeling is a second broad approach utilized in exposure assessment. Here the term modeling is used broadly to describe the construction of a methodology through which diverse data on different factors can be combined to predict levels of human exposure in the absence of complete monitoring data. Models are predictive tools used when direct measurement of exposure would be prohibitively time-consuming and expensive, and when the relationship between the sources of a chemical and the eventual exposure is complex. A

model may be constructed both to allow interpolation between experimental observations and to make predictions of exposure and circumstances that have not yet been experimentally studied.

Models often begin as an effort to describe and generalize theoretically a phenomenon observed in the laboratory or field. Monitoring data bases are used to construct mathematical relationships among variables of concern *(e. g.,* meteorological parameters and the temporal/special distribution of chemicals emitted from a source). For example, the air monitoring data from the St. Louis and the power plant plume studies cited above have been used to build and refine modeling tools for predicting population exposure to contaminants in the air.

Given the wide variety of possible situations requiring exposure assessment, it is not surprising that many different models have been developed. A recent catalogue of the models available for use in regulatory decision-making identified 156 models, most of which can be applied to exposure assessments *(81-83)*. A review of these models is beyond the scope of this chapter, but descriptions of various types of models are informative and can be found in the references *(17,27,60,84-111)*.

In general, models are most helpful when average, or idealized estimates of exposure are satisfactory. Even though the level of sophistication of a particular model may be high, the predictions may still be crude, because any model is a simplified description of the natural phenomenon it depicts. There is a need for more research to validate most models, since the accuracy of their predictions is often unknown or only roughly known. In addition, the accuracy of the exposure estimates made by models can be no better than the quality of the input data used. The use of models does not compensate for poor data, and in certain instances, may obscure the uncertainty inherent in the exposure predictions. The use of scientific judgment in interpreting results is essential.

C. Microcosms

The use of microcosms to study pollutant behavior provides an approach that combines features of both monitoring and modeling studies. The transport and transformation processes which occur between the source of a chemical and the eventual human exposure can be difficult and expensive to study in nature, and in the absence of data on these processes, models cannot be constructed. Microcosms, which attempt to recreate portions of the environment in the laboratory, can provide an alternate means for defining these processes. They have the added advantage that many variables can be controlled. Ideally, a microcosm, when properly validated, faithfully mimics the processes occurring in nature. By adding a chemical to such a system, its subsequent partitioning amongst the components of the environment, together with the associated chemical and biological conversions, can be studied in a single integrated experiment.

Marine, freshwater, terrestrial, subsurface or aquifer, and atmospheric microcosms have been studied *(84,112-130)*. For example, the laboratory microcosm concept has received increasing attention recently in studies which seek to predict residential exposure to products of combustion or air pollutants *(131,132)*. Limited validation of predicted, versus measured, levels of products of combustion in a residence has shown such predictions to be useful in assessing exposure *(129, 130)*.

D. Human Factors

In exposure studies using monitoring, modeling, or a combination of approaches, the actual behavior of the human population under study must be taken into consideration. Some examples illustrate this: 1) the amount of time that an individual spends indoors compared with outdoors will affect the risks associated with either outdoor or indoor air pollution; 2) failure of workers to wear protective equipment can increase their occupational exposure to hazardous compounds; and, 3) consumer exposure to vapors during the use of various products will decrease proportionally with increases in the amount of ventilation provided in the home.

Human behavior is often evaluated using information gathering techniques somewhat similar to opinion polls or marketing studies. In such a study, a randomly selected population is asked a series of questions that define aspects of their behavior that can affect chemical exposure. On an occupational setting "time-motion" studies of the periods of employee contact with varying work environments can contribute to an exposure assessment.

The exposure to direct and indirect food additives is monitored by the FDA using a number of complex studies of human eating habits. Surveys of food additive use have been undertaken since 1973 with the help of the National Academy of Sciences, as have studies of the migration of chemicals from packaging materials into foods *(15,19,23,25)*. Other related work has determined the frequency of consumption of individual foods and individual food serving sizes, with the data compiled in such a way as to be compatible with the population data found in the U.S. Census *(22)*. These surveys and studies have produced a complex array of information which then is converted by the FDA into estimates of population exposure to direct and indirect additives in human food *(16,24,135)*. Some of the same data are used by EPA in setting tolerances for pesticide residues in food crops *(14)*.

E. Structure-Activity Relationships

Data now exist on the chemical, physical, and toxicological characteristics of a large number of chemicals, as does information on their transport, transformation, and environmental fate. Thus, some correlations now can be made between the structures of certain chemicals and the properties they exhibit, a process called structure-activity analysis. Under favorable conditions, these correlations allow rough predictions to be made of the characteristics of chemicals which have not been studied, reducing the amount of testing necessary to make at least an initial judgment of the risks which they may pose *(99,136-142)*. Structure-activity relationships can be used to delineate the general properties of interest, but they are not generally a substitute for actual measurements.

The use of structure-activity relationships may allow preliminary exposure estimates to be made even when there is a scarcity of data on a specific chemical. Structure-activity analysis is a relatively new field, and the available tools are still crude. The user must exercise scientific judgment in interpreting the results, because substantial work remains to be done in refining and validating these techniques.

F. Integrated Exposure Assessments

Most assessments performed in support of rule-making consider only a single source or route of exposure. Such assessments are appropriate in the case when only one source or route of exposure is significant. However, certain recent exposure assessments on chemicals with multiple routes of exposure have considered all routes simultaneously *(144)*. In a pilot effort, an exposure assessment has been prepared which considers six related halogenated solvents and all routes of exposure simultaneously *(145,146)*. This

assessment, in combination with hazard data, attempts to provide a risk assessment data base for all six solvents and all routes of exposure. Using this approach, all regulatory options and combinations of options may be considered in seeking the most effective means of reducing risk.

The preparation of such integrated exposure assessments for widely used chemicals is very difficult and resource intensive and requires the contributions of specialists in many disciplines. The difficulty and expense of integrated assessments may limit the broad application of these valuable tools.

Monitoring of the levels of chemical contamination in human tissue, blood and urine, as discussed above, can provide a second method of assessing the total human exposure to certain chemicals depending on metabolism and persistence in the body.

G. Data Bases and Data Management

Research by the Federal regulatory agencies on human exposure has produced a large body of data which can be used in performing assessments. One recent index identified 319 data bases, many of which could be of value in exposure assessment *(82)*. For example, monitoring data are reported regularly for National Pollution Discharge Elimination System (NPDES) permits, issued under the Clean Water Act, thereby affording information on 133,000 sources of chemicals found in surface waters *(147)*. Monitoring data on air emissions from many sources and ambient air quality data from over 4,000 active air monitoring sites across the country are included in the Acrometric and Emissions Reporting System (AEROS) *(148)*. In addition, many major research efforts (*e. g.*, the St. Louis air pollution study) generate large data bases useful in exposure assessment *(43,44)*.

Many data bases which do not deal directly with chemicals are also useful. The data of the U.S. Census provide information helpful to determine populations at risk. The National Climatic Center maintains detailed weather records, while the U.S. Geological Survey has a massive data base on water on a regional and state basis *(149,150)*. The EPA has been constructing a comprehensive data base on organic chemical manufacturing *(151)*.

As the number of data bases and models available for exposure assessment grows, it will become increasingly difficult to access and manipulate the large quantities of information and broad assortment of techniques without computer systems. Preliminary exposure assessments, reviews of the relative effectiveness of regulatory control options, and many other assessment-related tasks, which in the past required effort, can be accomplished rapidly with limited accuracy at a computer terminal, calling upon data bases and models as needed *(152-156)*.

III. BROAD ISSUES AFFECTING EXPOSURE ASSESSMENTS

A. Extrapolation and Non-Representative Systems

Exposure assessments, in a manner often analogous to risk assessments, may require extrapolation from a limited number of sites, to a large population. Such extrapolations carry with them uncertainties that need to be reflected in the final assessment.

In some cases, the exposure measured may not correlate well with the actual experience of the larger populations. In such cases, the non-representative nature of the exposure measurement may give rise to an assessment that is inaccurate. Such errors can arise especially when microcosm measurements and models are used instead of extensive monitoring networks.

B. Quality Assurance

Measurements of chemicals at the trace levels of concern, as needed for many exposure assessments, are difficult exercises in analytical chemistry and can lead to errors and uncertainties which should be considered in preparing an assessment. Until recently, extensive quality assurance information was not a routine part of most research, testing, and monitoring programs. To improve this situation some agencies have instituted quality assurance procedures which require that records be maintained on the accuracy and reliability of every chemical measurement associated with research, monitoring, and compliance enforcement *(157,158)*. Two examples of such state-of-the-science projects are the EPA-Chemical Manufacturers Association Joint Study on water treatment systems and the Love Canal Monitoring Study *(159,160)*.

The quality assurance portion of the Love Canal Monitoring Study provided information on the accuracy and reliability of the analyses of chemicals at trace levels in air, water, and soil. The results demonstrated the limitations inherent in the measurement of complex mixtures in a variety of matrices. The overall results in the Love Canal studies suggest that the most advanced analytical techniques correctly identify trace levels of an organic chemical in complex environmental mixtures with approximately 70 percent certainty.

To date, the major efforts on quality assurance have been devoted to chemical analyses of environmental materials. As discussed, other data contribute to the exposure assessment, *e. g.*, information generated through microcosm studies, human behavior, or modeling. There is a need for further validation of such tools to assure their accuracy and reliability in estimating exposure *(161-164)*.

C. High Risk Populations

Subgroups of the population may be particularly at risk from exposure to a chemical. These groups may be exposed to unusually high levels of a chemical or may be especially sensitive to the toxic properties of a compound. The existence of subgroups of either type could lead to a compound producing a substantial risk even though the average exposed individual may experience little, if any, risk. A thorough exposure assessment needs to consider the possibility that high risk populations or situations exist. Many, or most, current exposure assessments do not have enough data to allow an evaluation of the effects of a chemical on high risk populations.

D. Refinement of Assessments

At the initial consideration of a chemical, only crude data relating to exposure will generally exist. Such crude data may allow a rough estimate of likely exposure; this preliminary estimate may be useful to decision makers in assigning priorities and resources. It is also possible that crude data may allow an estimate of the maximum or minimum exposure that may be expected to occur. Such an analysis may effectively rule out, or indicate the presence of, a significant risk. Specifically, a "worst case" estimate, where all assumptions are chosen so as not to underestimate the possible exposure, may indicate that little risk exists if significant exposures are not predicted.

As more resources are devoted to an exposure assessment and more studies conducted, a refined assessment is generated. Often there will be several stages of refinement of an assessment, and the degree of refinement and accuracy finally required will be related to the certainty needed to enable risk management decisions.

E. Relationships to Biological Dose

The data generated in an exposure estimate must ultimately be coupled with biological data on the hazards presented by a chemical in order to determine the actual risk presented by the exposure. In order to achieve this coupling, the estimated human dose must be related to the doses received in the human or experimental studies that generated the information on the biological hazard. The type of exposure data needed can vary for different risk estimation procedures. For example, for risk estimation using a dose-response relationship that is not linear in the range of human exposure, information on the frequency distribution of different exposure levels in the population is needed, instead of simply an estimate of the average exposure.

This comparison can be complicated by differences in the frequency, duration, intensity, and route by which the two doses were received. This is particularly relevant since human exposures to a single chemical may follow many different patterns ranging from a high single exposure to a low level lifetime exposure. Humans will also often be exposed through several routes: ingestion, inhalation and dermal. Because of the diversity of human exposures, frequently there will not be toxicological data available obtained under the same exposure conditions. In those cases, careful review and expert judgment enter into the application of the exposure data.

Recently, there has been considerable interest in the possibility of relating human chemical exposures to hazard studies by utilizing biological indices of the effects of the different exposures. Specifically, it has been suggested that the quantity of a carcinogen reaching and interacting with DNA be directly compared in exposure and hazard studies. This topic receives fuller discussion in Chapters 1 and 4 of this document. It should be noted that at the present time, data to allow such comparisons are generally not available, and considerable research still is needed in order to assess the practical applicability of this approach.

F. Overall Limitations of Exposure Assessments

Many exposure assessments are unable to distinguish all of the parameters that are important in determining possible health effects. These include variations of exposure with time, including, peak versus average exposures, and annual versus daily exposures. In addition, exposure assessments rarely, if ever, are able to estimate the dose that actually reaches a biological site where an effect may occur. As a consequence, some information is often available about the magnitude, frequency, or duration of exposure, but rarely is information available that is adequate to determine accurately all three. In addition, the population whose exposure is being assessed will often be exposed by more than one route from a number of different sources. As a result, estimates addressing single routes or sources of exposure are often inadequate to represent what is actually occurring. Environmental monitoring data, models, and microcosms may sometimes be inadequate, and of limited value, and may lead to a false sense of security if broadly applied without consideration and enumeration of their limitations.

Finally, there are a number of factors that are a part of both a hazard assessment and an exposure assessment which usually are not completely determined. These factors include the age distribution of the exposed population, special sub-populations that may be particularly sensitive to low doses, cumulative exposures, latency, host factors, or populations which may be exposed to particularly high concentrations. As a result, there are generally unknown data and uncertainties associated with exposure assessments at many points. It is important that the assessor describe the data that are missing, the associated uncertainties at each step of the assessment, and the assumptions made when filling in the gaps.

At present, therefore, there is a great deal that can be improved in carrying out exposure assessments. Informed decision making often requires consideration of a complex array of information, rather than a single numerical estimate of exposure. To the extent possible the ultimate use of the data should be defined, and the exposure assessment tailored accordingly. The limits of the assessment, both conceptual and methodological, need to be described, and all the uncertainties enumerated. Quality assurance programs and efforts should be included as well as a description of efforts made to validate laboratory studies and mathematical modeling; in general, careful scientific review of all elements of an exposure assessment should be stressed.

IV. APPENDICIES

A. Appendix A.--FDA Information Sources for Exposure Estimates

Survey, epidemiological, toxicological, and analytical data used by the Bureau of Foods in determining the human health consequences of exposure to many of the categorical agents which the agency regulates are derived from a variety of sources. For example, NIOSH and OSHA provide data on occupational exposure and CDC provides data for a variety of exposure sources. The scientific literature and various reports provide a wide variety of animal and human data. In addition, data are obtained on types and amounts of foods eaten, concentration of food contaminants and human health effects.

1. Food Consumption. Some principle sources of food consumption data include: 1) the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey (NFCS); 2) National Health and Nutrition Examination Survey (NHANES); and 3) Market Research Corporation of America (MRCA) survey data. Sources of food compositon data include: 1) USDA: Handbook 456, Handbook 8, National Nutrient Data Bank file; 2) NHANES: Model Gram and Nutrient Composition files; and 3) MRCA: Lead content of foods and methylxanthine content of foods (based on data from Total Diet Study and industry). Additional information on some of these sources is provided in the following discussions:

a. Nationwide Food Consumption Survey. The results of the Nationwide Food Consumption Survey (NFCS) 1977-78 provide data on the kinds and quantities of foods and nutritive values of diets ingested by men, women and children of different ages classified by various household characteristics. Dietary information obtained for individuals included the kind and amount of each food eaten; the time the food was eaten, the type of service, and the cost. Individuals were also asked if the day's intake was typical and if they were on a special diet, were vegetarians, or took vitamins, minerals or other supplements. Reported are average intakes per day and per eating occasion for foods most commonly eaten by individuals who participated for three days in the NFCS conducted by the U.S. Department of Agriculture.

b. National Health and Nutrition Examination Survey. Data were collected for NHANES II through response to questionnaires on medical history, food consumption, and health-related behavior. Data also were collected through direct medical examination. NHANES II was conducted on a nationwide probability sample of approximately 20,000 persons ages six months to 74 years from the civilian non-institutionalized population

of the United States. Food consumption data is of the form of quantities of food consumed and frequency of eating in a 24-hour recall period.

c. Market Research Corporation of America Surveys. One of the largest proprietary surveys of food intake is one conducted by the Market Research Corporation of America (MRCA). This corporation conducts the Menu Census survey which is designed to collect detailed information for one year on the ultimate disposition of all food products in terms of their consumption by individuals or their use in preparation of other dishes consumed by the individuals. Only information on frequency of eating is reported; that is, quantities are not included. Each Menu Census consists of 4,000 households. Each household reports all food preparation and consumption at home and away from home for 14 consecutive days in daily diaries. Brands and food packaging materials are also described. The sample is balanced within each quarter as closely as possible to the U.S. Census by various demographic characteristics, including region, household size, household income and other socioeconomic variables. Pertinent comparisons among these three data sources are given in the following table:

TABLE A1—NATIONAL FOOD CONSUMPTION SURVEYS

Characteristic	USDA NFCS 1977-78	NHANES II 1976-80	MCRA MENU CENSUS VI 1977-78
Sample size	30,770	20,322	11,150
Length of dietary survey	3 days	1 day	14 days
Dietary methodology	24-hr. recall (one day) records (two days)	24-hr/recall	Daily diary
Collection methodology	Recall: interviewer recor self-administered.	Interviewer	Self-Administered via mail
Reporter	individual subject	individual subject	main food preparer
Place of Recording	Home	mobile exam center	Home
Food quantities	yes	yes	no
Drinking water	yes	no	no
Processing/Packaging information.	no	no	yes
Other surveys in this series	1965-66	1971-74	1967-75

2. Total Diet Studies. The Food and Drug Administration uses several surveillance and regulatory programs to monitor the amount of chemical contaminants in the U.S. food supply. Most of these programs measure contaminants in raw or unprocessed foods.

The Total Diet Studies monitor levels of chemical contaminants and essential minerals in table ready food and consider dietary intake of these substances by various age-sex groups. The Total Diet Study is an annual program which involves the purchase of approximately 200 foods in grocery stores across the United States and the analysis of these foods for essential minerals, toxic elements, radionuclides, industrial chemicals and pesticides. The food list and diets, beginning in April 1982, were revised to reflect the present food supply and the current food consumption habits. The number of age-sex groups was increased to eight (infants, young children, male and female teenagers, male and female adults, and male and female older persons) in order to expand the coverage of the U.S. population. Foods were analyzed individually, rather than in commodity groups, to obtain information on the contribution of specific foods to the daily intake of minerals and contaminants.

The diets are based on data from the 1977-78 USDA Nationwide Food Consumption Survey (NFCS) and the Second National Health and Nutrition Examination Survey (NHANES II) carried out by the National Center for Health Statistics in 1976-80. Two hundred and thirty-four foods are collected from four geographic regions (northeast, south, west, and north central) and analyzed by the Kansas City Field Office Laboratory for 11 essential minerals and more than 120 chemical contaminants. The essential minerals analyzed for are: copper, iron, magnesium, manganese, potassium, phosphorus, calcium, sodium, iodine, selenium, and zinc. The daily intake by weight of these 234 foods has been weighted to represent 100% of the usual diet for the eight age-sex groups. These estimated food intakes are used to assess daily contaminant and mineral intake.

3. Food Additives

a. National Academy of Science Survey Data. The NAS surveys provide the agency with a data base for the concentration of additives used in food. To ensure confidentiality the NAS maintains the raw data from the surveys. These data have been obtained from mailed questionnaires that have been sent to over 2000 firms with approximately 1100 responding. The values obtained from the NAS are used as the substance concentration value in estimating intakes.

The surveys approach the question of usage of food additives from two directions: 1) how much poundage is used annually; and 2) what is the level of use in each of the firms' products.

b. Bureau of Foods Data Base. The Bureau of Foods' database for food additives comprises food additive safety information for substances added directly to food in the United States. Nearly 1600 items (over 1300 synthetic flavoring substances, nearly 300 direct additives, and some 70 color additives and color diluents) supply data on human exposure levels, chemical structure, and toxicological parameters. The computer database is searchable by software programs that permit sorting of the data on many parameters, including lowest effect levels, test animal species, toxicological effects and organ sites, as well as exposure and chemical structure categories.

This database comprises one module of the Bureau's SIREN (Scientific Information Retrieval and Exchange Network) system, the other two being the food additive information system (FAIS) and the new animal drug information system (NADIS) containing over 1/2 million indexed records across two FDA bureaus.

4. Census Data. Census data on the count and characteristics of the population are obtained from the Bureau of the Census. The agency has census files for 1960 and 1970 for the total population counts for each U.S. county or county equivalent, such as independent city, and within each county equivalent by sex, race, and 5-year age interval. These data are used in calculating rates in the population. Population estimates for the years 1971-1978 are available.

5. Fish Intake Data. Fish intake data are important to FDA in regulating food safety and has been used in evaluating the hazard of mercury, dioxins, and other contaminants of fish. The sources of national fish production data are the National Marine Fisheries Service (NMFS) and the USDA. NMFS calculates an annual estimate of the *per capita* consumption of seafood from data on the total catch of commercial seafood. The estimate does not include commercial fresh water fish, recreationally caught fish or marine fish sold at roadside stands. The NMFS also supplies a database on the mercury

content found in fish. The USDA calculates annual *per capita* fish intake by adding an estimate of recreationally caught fish and the other type of data to the commercial seafood production to calculate the total fish consumption.

6. Natural Toxicants. A computerized natural toxicants literature file is maintained which contains reprints of articles relative to the occurrence and health effects of mycotoxins, including plant and marine toxins. In addition, information is maintained on the level of mycotoxins in various commodities in the U.S.

7. Elemental Analyses. Data from the U.S. Geological Survey on elemental analysis of soils, waters, and vegetation provide background information on geographic differences in elements likely to be in the human diet.

8. Special Studies. Consumer interview surveys are conducted periodically on topics of special interest, which may grow out of immediate or potential health risks to the public or the need for information not currently available in areas of regulatory concern to the agency. The studies are designed internally, executed under extramural contract and the data are delivered on computer tape for internal tabulation and analysis.

9. Literature. A bibliography file of articles written by FDA employees is maintained. This file together with a computerized cross index contains articles on such subjects as analytical methods and food contaminant levels.

B. Appendix B.–Exposure Assessment at EPA

1. Introduction. An exposure assessment is that process which seeks to define the quantity of a chemical which comes into contact, or may come into contact, with human populations. This integral portion of the risk assessment is a growing technical speciality whose complexity has long been noted but has only recently been addressed using the sophisticated scientific tools available *(28,29)*.

The process involves consideration of the magnitude, frequency and duration of encounters between individuals and the chemical in question. In some instances (*e. g.*, prescribed dosing with drugs), the information is rather precisely known. In the case of exposure to chemicals of environmental concern, however, the assessment process is often associated with a dearth of data and assumptions/approximations must be made to fill in the gaps. For example, while some data may be available on the "direct exposure" from the emissions of a manufacturing plant, estimates of the "indirect exposure" resulting from potential bioaccumulation in the food chain may be less precisely known.

In recent years, data bases have been compiled, computer models developed, laboratory/field measurement taken and "standard operating procedures" adopted *(30-32)* that have narrowed the uncertainty associated with some of these estimates.

2. Defining the Exposure Assessment. Before beginning an exposure assessment, it is necessary to define clearly the product needed in terms of purpose, breadth, depth and approach. This conceptual scheme is being developed in detail by the EPA *(26,27)*.

Depending on the answers provided to these questions, different resources are available to construct the exposure assessment. Some of the more important resources are discussed below.

3. Monitoring. In many cases, site-specific monitoring is performed in order to generate qualitative or quantitative data for an exposure assessment - *e. g.*, more than 5000 water, soil, and sediments samples have been analyzed for the presence of 2,3,7,8-tetrachlorodibenzo-p-dioxin in the state of Missouri; groundwater and vertical soil cores have been analyzed for ethylene dibromide in Hawaii, California, and Georgia; and stack emissions have been sampled for heavy metals.

In addition to site-specific information, qualitative and quantitative exposure information is available from the various monitoring networks which have operated over the years to collect data on chemicals in different environmental media. For example, the Mussel Watch Program *(53,59)* has analyzed shellfish in the U.S. estuarine waters for a variety of pollutants. Shellfish are filter feeders and are generally efficient bioconcentrators of water contaminants; the residues in these organisms serve as sensitive markers for upstream pollution of waters which feed the estuaries.

In addition, great quantities of analytical chemical information on U.S. waters can be accessed through the computer data base, STORET. These data represent information gathered over the past years from every major watershed in the U.S.

Increasingly, the problem of groundwater contamination is of concern. Little systematically collected information on this environmental compartment is available at this time, although more effort is being expended to identify and quantitate levels of certain chemicals such as aldicarb and ethylene dibromide at selected sites.

EPA has gathered information on atmospheric pollutants for many years. As part of the national efforts to the quality of the ambient air, innumerable measurements have been made at various times and locations on certain pollutants, namely carbon monoxide, sulfur oxides, nitrogen oxides, particulates, hydrocarbons, and photochemical oxidants. Much of this information is available in computer files maintained by EPA, Office of Air Programs in Research Triangle Park, NC.

In a broader perspective of "monitoring" -- where the chemical is in the environment -- EPA's Office of Toxic Substances maintains and has access to files which identify chemical substances which are manufactured in or imported into the U.S. Some types of geototal production figures are generally available, along with graphic information on the location of production sites. This information is useful in generating a "material balance" of a chemical (a complete accounting of sources and disposition of a chemical in the environment).

EPA often relies on data generated by other Federal agencies (*e. g.*, FDA, NIOSH and the Department of Labor) to estimate the exposures likely to be encountered from eating food or being in the workplace.

Increasingly, interest is expressed in determining more direct measurement of human exposure to environmental pollutants. For years, EPA has maintained the National Human Adipose Tissue Network which collects adipose tissue from selected cadavers in such a way as to obtain a rigorous statistical sample of the U.S. population. These tissue samples are analyzed for a variety of organic chemical residues so that trends and potential problem chemicals can be identified. Further, the Agency publishes a summary of studies which has appeared in the scientific literature on residues in humans.

An ambitious program underway at the EPA, called the Total Exposure Assessment Methodology (TEAM) study *(66-71)*, combines personal monitor results *(34)* with analyses of food, beverages, water, human blood plasma and serum, urine, breath and mothers' milk to characterize the individual exposure of large test populations to a variety of organic chemicals over extended periods of time. Such data also will be useful in determining what portion of a particular chemical is actually absorbed by the body and how absorption varies from one individual to another at different exposure levels. The actual dose of a chemical which determines the health outcome from the

exposure is often different from the apparent exposure level *(165)*. The goal of the TEAM program is to develop an individual exposure monitoring methodology for use in estimating population exposures, including analytical chemical techniques of proven accuracy and reliability, tools for conveniently collecting detailed information on the activities of individuals on a 24-hour a day basis, and tools for managing, analyzing, and interpreting the data produced by such studies.

In sum, the Agency has broad environmental monitoring data on a number of chemical substances in various media. The information too often is not sufficient in depth, detail, and validation to provide precise data in a given exposure situation. Further uncertainties are introduced when attempts are made to extrapolate these data to absorbed dose. Therefore, while the Agency is indeed building an exposure data base, the range of uncertainty surrounding any exposure situation can be significant.

4. Modeling. The questions of "indirect exposure" often center on the transformation, transport, and ultimate fate of a chemical once it is released into the environment. While direct monitoring can provide some data in this regard, important detailed questions of chemical kinetics, distribution between media, potential uptake by biological organisms, and the like cannot easily be derived from such information. Two approaches to filling this gap are through the use of microcosms and through the use of mathematical modeling.

a. Microcosms. A microcosm is a recreation of a portion of the environment in the laboratory -- a physical model of nature. Ideally, the microcosm faithfully mimics the processes occurring in nature. By adding a chemical to such a system, its subsequent partitioning amongst the components of the environment, together with the associated chemical and biological conversion, can be studied in a single integrated experiment.

Marine, freshwater, terrestrial, atmospheric and subsurface or aquifer microcosms are available and have demonstrated utility. Much of our knowledge of the chemistry which occurs in the atmosphere has been generated using smog chambers *(80,112)*, i.e. atmosphere microcosms. Marine microcosms are now being used to understand the complex processes which affect the fate of a chemical in the ocean where it can be transformed by the benthate community, and eventually concentrated up the food chain leading to human food *(113-116)*. Terrestrial microcosms are being used to define more precisely the fate of a chemical in soil-plant-water systems *(127-129)*. Subsurface or aquifer microcosms have been created using special drilling techniques which allow a column of material to be removed from an aquifer in an undisturbed and uncontaminated state *(130)*. Such columns are then used to study the chemical and biological conversions underground.

One of the continuing questions raised about microcosms is how well do their results actually mimic what would occur in the "real" environment itself. In recent years, increased effort has been aimed at validating these systems and gaining an appreciation of the limitations of their data. At this time, however, the risk assessor must recognize this inherent potential source of error.

b. Mathematical modeling. One of the most frequently used tools in exposure assessment is mathematical modeling. Most such models begin as an effort to describe theoretically the phenomena observed in the laboratory or field. Large monitoring data bases are used to construct mathematical relationships between variables of concern [e. g., meteorological parameters and the temporal/spacial distribution of chemicals emitted from a source]. These relationships constitute the model which, because of the inherent complexity, often requires a computer for its use. Models are predictive tools used when direct measurement of exposure would be prohibitively time consuming and/or expensive and when the relationship between the sources of a chemical and the eventual exposure is complex.

Given the wide variety of possible situations requiring exposure assessments, it is not surprising that many different models have been developed. A recent catalogue of the models available for use in regulatory decision-making *(81)* identified 156 models, most of which can be applied to exposure assessments *(82,83)*. A description of the general features of some advanced models is informative *(85)*.

Ambient air modeling has reached the highest level of complexity with a capability for considering numerous point, line, and area emission sources simultaneously *(86-88)*. Several models *(84)* predict the complex chemical conversions occurring in air during transport of pollutants. One model allows prediction of the half-life and reaction products for an organic chemical in air *(89)*. Models currently under development address the problems of predicting exposure on a regional basis *(90)* and in areas with rough terrain *(91)*. **THE HANDBOOK FOR PERFORMING EXPOSURE ASSESSMENTS** *(166)* lists a number of routinely used air models available through NTIS.

Models are also available for the indoor air environment. The breadth and complexity of such modeling varies in proportion to the complexity of the environment being modeled. Even a single room or residence model may become quite complex when considerations of air filter efficiencies, particulate agglomeration/plating-out, nonspecific heterogeneous decay of reactive pollutants, multiple sources, sinks and varying source-strengths are encountered. Additional difficulties of assessing infiltration rates and the partitioning of ventilation rates among discrete volumes in a building have led to the use of compartmented models *(92)*. The contribution of varying levels of ambient pollutants to the indoor environment has been evaluated by a time-segmented model which has undergone limited field validation *(134)*.

As a result of the Great Lakes research program *(93-97)* and research into the environmental fate of pesticides *(98,99)*, models are available which describe the movement of chemicals in fresh water aquatic environments. Studies on the ocean disposal of municipal wastes have led to models for chemicals in coastal waters *(100-102)*. Recent work on terrestrial microcosms has provided input data for a terrestrial model *(103)* which includes consideration of plant uptake. A number of models are available which describe leaching and runoff of chemicals to streams *(81)*. The newest areas of modeling are ground water *(60,104-108)*, human micro-environments and activity patterns *(109-111)*, food consumption *(17)* and multimedia environmental partitioning *(167,168)*.

As models increase in complexity, the ability to predict exposure generally becomes more accurate. This additional accuracy, however, is purchased at the price of additional input data *(135)*. The choice of models available for a particular assessment may be reduced by a limited data base.

In general, models are most helpful when rough estimates of exposure are required. Even though the level of sophistication of a particular model may be high, the predictions are still crude because any model is an oversimplified description of the natural phenomenon it depicts. There is a need for more research to validate most models, since the accuracy of the exposure estimates

made by models can be no better than the quality of the input data. The use of models does not compensate for poor input data, but in certain instances may obscure the true uncertainty inherent in the exposure predictions. In sum, from modeling as well as monitoring, the Agency can obtain valuable information. At the same time it needs to be recognized that this information might be accompanied by potential significant uncertainties. Nevertheless, the use of scientific judgment in interpreting results is essential.

C. Appendix C--Chemical Exposure Assessment for Consumer Products

Assessing human exposure to toxic chemicals from consumer products is a vital part of CPSC's chemical hazard work and is the element which most distinguishes CPSC's efforts from the activities of other Federal agencies. The range of uses of chemical compounds in consumer products is great and the ways that consumers utilize a single product may vary considerably. For example, the techniques required for assessing exposure to a gas that may be emitted from building materials into home air and for a dye or other agent contained in cloth that may contact the skin have little in common. Most experience in exposure assessment from products has been gained over the past few years. Because of this, CSPC approaches exposure assessments on a case-by-case basis with each study in general requiring original experimental or theoretical work. Nonetheless, the general activity of exposure assessment can be described as a four step process:

(1) Determine the fact of the release of a compound from products and estimate the quantity of release. The degree of difficulty of this step can vary greatly. For example, it is straightforward if the compound of interest is contained in an aerosol product. It may require extensive experimental study if the compound is contained in a plastic matrix that is subjected to a variety of uses. More often than not in CPSC's experience, experimental studies are required. The presence of a compound in a consumer product does not imply that release actually occurs.

(2) Relate the quantity of release with the level of human exposure (to the outside of the body) from use of the products. A series of analyses are required for this step. First, use patterns for the products must be determined; both the most typical use patterns and those that could lead to lower or higher degrees of exposure must be considered. Experience of staff, information from industry, and consumer surveys can provide this information. Then, for each specific use, the data on chemical release must be used to estimate the actual amount of contact the user has with the chemical. For a chemical emitted into the home air, data on release rate, use patterns, home volume, and air exchange rate can be combined in a mathematical model to estimate the average and peak levels in the air. On the other hand an experimental study could be conducted to measure actual air levels from a certain product use. As another example the quantity of a liquid that comes into contact with skin can be measured.

(3) Determine the entry of the material into the body. This step can be straightforward if the toxicity information on a chemical was obtained by a route of exposure comparable with consumer use. On the other hand, particularly in the case of dermal exposures, data on entry of a compound into the body are frequently lacking. In that case experimental studies, such as painting the skin of an experimental animal with a radio labeled quantity of the compound of interest, may be conducted.

(4) Combine the data in steps 1 through 3 for a complete estimate of human exposure to a compound. This estimate can then be combined with health hazard information (toxicity) in evaluating human risks; it can serve as the basis required for a mathematical estimation of risk.

These steps are presented as one sequence, however, exposure estimation is often an interactive procedure. One uses available, limited information to make preliminary estimates of risk that may (if sufficiently conservative) eliminate concern about an exposure or may be successively refined by gathering data where it is most needed.

In addition, in certain studies, some of the above steps may be combined rather than considered separately. For example, a chemically treated cloth may be placed in contact with the skin of an experimental animal and the amount of uptake of the chemical by the animal measured. This experiment provides information that could separately be obtained by measuring both quantities released from the cloth and rates of penetration of the chemical through the skin. As another example, personal air monitoring can take into account both release rates from products and patterns of product use.

Exposure assessment for chemicals in consumer products is a developing science which makes innovative use of standard physical and chemical data, demands development of new experimental procedures, and combines relatively "hard" experimental data with "soft" data on widely varying human behavior patterns. While each exposure assessment is now a new undertaking, certain basic techniques (such as air level modeling) are finding repeated application. In the next several years the knowledge now being gained should lead to more readily standardized and more easily performed exposure assessments.

V. SUMMARY

Exposure assessment is a co-equal component, along with hazard assessment, in the evaluation of human risk. The assessment of exposure to chemicals by direct routes (*e. g.*, breathing emissions from an industrial stack) and indirect routes (*e. g.*, pollutants accumulating through the food chain) depends upon analytical chemical monitoring data, results of modeling estimates, and assumptions needed to fill data gaps. The field of exposure assessment is rapidly developing and only recently have attempts been made to develop systematic approaches to the problem. Although current efforts are often associated with considerable uncertainty, the increasing sophistication being brought to bear on the issue holds the promise of greater confidence in these estimates in the future.

Methodologies can be broken up into two broad categories, monitoring studies, which depend more on the measurement of exposure, and mathematical modeling, which use analysis to define the exposure. Microcosms, as samples of the environment, provide data for both approaches. Human factors, however, are important and must be considered.

An important part of the assessment process is the marshaling of the appropriate data bases, and some of the data bases used by three regulatory agencies are listed in apppendices.

Broad issues affecting assessments include the question of extrapolation from representative systems to large populations, quality assurance, the question of high-risk populations; and the approach of coupling exposure data to actual biological dose to improve assessments, are emphasized, with a discussion of the limitations of assessment as it is being done today.

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Chapter 6--Utilizing Scientific Data in Assessing Human Cancer Risk Associated With Chemical Exposure

I. INTRODUCTION

Assessment of human cancer risk associated with some specified chemical exposure is a complicated scientific endeavor that requires careful review of all pertinent information by appropriately trained individuals. This process relies heavily on information derived from epidemiological, clinical, and long-term animal studies. Short-term test results and information on structure-activity relationships, comparative metabolism, pharmacokinetics and mechanisms of action also contribute, in varying degrees, to the assessment.

While there is general agreement within the scientific community about the steps involved in the risk assessment process, a number of specific issues related to these various steps are still unresolved; *e. g.*, the methodology for combining positive and negative data when evaluating carcinogenic potential and the selection of a dose-response model for making low-dose risk projections. The execution of any given risk assessment may also be hampered by the existence of critical gaps in the data underlying the assessment. Because these issues and data gaps can be pivotal in the process, it may be necessary to make judgments about these unresolved issues and assumptions to adjust for deficiencies in the underlying data base that will permit risk assessments to be completed. These judgments and assumptions should be plausible and, to the extent possible, be based on the scientific information on hand. However, the validity of these judgments and assumptions often cannot be conclusively established, so the risk assessment process should not be viewed as strictly "scientific" in the usual sense of the word. Instead, risk assessment involves a complex blend of current scientific data, reasonable assumptions and scientific judgments that permit decisions to be made in the absence of complete information.

With the passage of time the scientific data base grows, information gaps are filled, and perceptions change. This process of evolution and maturation results in a need for periodic reformulations and restatements of the appropriate guidelines for risk assessment.

The present chapter describes the basic framework for carcinogenic risk assessment and attempts to reflect what general agreement currently exists within the scientific community. It is intended to provide a bridge between the scientific data base on carcinogenicity developed in previous chapters and the various federal regulatory agencies that are charged with the responsibility of protecting the general public from exposures to carcinogenic agents.

II. STEPS IN THE ASSESSMENT PROCESS

There are four steps or components *(1)* that are typically involved in carcinogenic risk assessment. The first, which is often referred to as hazard

identification, entails a qualitative evaluation of both the data bearing on an agent's ability to produce carcinogenic effects and the relevance of this information to humans. The second, exposure assessment, is concerned with the number of individuals who are likely to be exposed and with the types, magnitudes, and durations of their anticipated exposures. The third component, hazard or dose-response assessment, uses the information on carcinogenicity from the hazard identification phase together with mathematical modeling techniques to estimate the magnitude or an upper bound on the magnitude of the carcinogenic effect at any given dose level. Finally, one may combine the information from the first three components or steps to characterize the carcinogenic risk associated with the expected human exposure to the compound of interest.

A. Hazard Identification

Due to the lack of complete information, there may be some uncertainty involved in determining whether or not an agent poses a carcinogenic hazard to humans. While information on human exposures and effects is particularly valuable, too often such data either do not exist or are inadequate, and one must rely primarily on information from long-term animal bioassays in assessing the potential for carcinogenic response in humans. In reviewing data, each relevant study must be evaluated as to the limits of inference implied by the experimental design, the results, and the conclusions. Although strict criteria for evaluating carcinogenicity data have not been developed for all circumstances, there seems to be reasonably good agreement among scientific groups as to the general elements to be included as a part of qualitative carcinogenic assessments (see also Chapter 1) *(2-8)*.

Epidemiological studies can, under certain circumstances, provide direct measures of carcinogenic effects in humans (see also Chapter 4). For example, some epidemiological investigations are able to associate cancer incidence or mortality with exposure to specific chemicals, industrial processes, or components of an individual's life style. Analytical studies, *i. e.*, case control and cohort studies, are especially important indicators of possible human carcinogenic risk, but case reports and descriptive studies may also be supportive. Consistent results in independent studies, freedom from bias and confounding factors, reliable exposure data, reasonable follow-up time, dose related responses and high levels of statistical significance are among the factors leading to increased confidence in a conclusion of carcinogenicity. Even if an epidemiological investigation fails to demonstrate an increased incidence of carcinogenicity among the exposed study members, upper and lower confidence limits on the risk measure used in the study can indicate a range of probable risk that could be incurred by a similarly composed segment (*i. e.*, in terms of age, race, sex, etc.) of the general population.

Evidence from long-term animal bioassays (see also chapter 3) constitutes the second major class of information bearing on the carcinogenicity of chemicals. The primary factors that are considered in the evaluation of carcinogenicity are higher tumor incidence and shorter latency in treated groups relative to controls. Findings are strengthened by the existence of positive effects in more than one treated group or sex. Additional support comes from positive results observed with different routes of exposure, in replicated experiments, in different animal strains and species, and in multiple organs or tissues. Attention is also given to the magnitude of tumor increase in treated animals, the existence of dose-related trends, the degree and extent of malignancy at a given site as a function of dose and time, the evaluation of concurrent non-neoplastic pathology in treated animals, and the finding of even a limited number of rare tumors in the exposed group(s). In addition the similarity, or lack of it, between contemporary and historical control tumor rates can affect the carcinogenicity evaluation.

Beyond these two major types of evidence, additional information bearing on the qualitative identification of carcinogenic potential may be gained from short-term test results (see also Chapter 2), including genotoxicity testing, macromolecular binding and *in vitro* transformation; short-term *in vivo* tests such as skin painting experiments; comparative metabolism studies among species; review of known physiological, pharmacological, biochemical and toxicological properties of the chemical (see also Chapter 1); evaluations of contaminants, degradation products and metabolites of the chemical under study; and consideration of the carcinogenic potential of structurally related compounds. At the present time these latter categories of information will often play a supporting or confirmatory role in the process of human cancer hazard identification. However, when specific information on comparative metabolic and kinetic data, exposure route-dependent responses, etc. is available, and its relevance demonstrated, it may be useful in determining the likelihood of possible human cancer hazard.

The relevant data discussed above are reviewed and assessed to determine if the chemical is likely to be carcinogenic in humans. The greater the consistency of the information, the greater the confidence that the agent poses or does not pose a carcinogenic hazard for humans.

B. Exposure Assessment (see also Chapter 5)

Without exposure, there obviously is no risk to the human population, regardless of the potency of the carcinogen under consideration. Thus, exposure evaluation is a critical component of the risk assessment process. One of the most frequently encountered problems when attempting to use epidemiological data in cancer risk assessment is the lack of appropriate historical exposure information.

In an exposure analysis, a group or groups of individuals are identified and described with respect to their population size and composition, and the route (*e. g.*, inhalation, dermal, ingestion), magnitude, frequency, and duration of their exposures. In addition, consideration must be given to both direct exposures (*e. g.*, drugs or occupation) and indirect exposures (*e. g.*, food or air) that result from a chemical's transport through various environmental compartments before impacting on humans.

For a given exposure source the concentration or amount of the chemical in that medium is determined by measurement, estimated by modeling, calculated from physical-chemical properties and other information on the agent, or projected from data on surrogate chemicals. Common values might include ambient airborne concentrations given as parts of chemical per million parts of air or the number of milligrams of a drug per dose. Measurements, estimates or assumptions then need to be made concerning the exposure of humans to the chemical through a given medium: *e. g.*, the frequency of consumption of a specific food containing a pesticide residue or the frequency, pattern, duration and conditions of use of a consumer product containing a cleaning solvent. Next, assimilation of the chemical into the body is considered:

again there is reliance on whatever pharmacokinetic data or estimates are available. Values may be expressed in a number of ways such as the percentage of dose absorbed from the gastrointestinal tract, the movement of so many micrograms of chemical across a given area of skin over a certain time period, or the percent of the inhaled material absorbed in the respiratory tract.

All the above information, *i. e.*, population identification and characterization, chemical concentration in a given medium, the nature and pattern of exposure and finally the assimilation of the chemical into the body is assembled and analyzed. Information on multiple sources of exposure may then be combined into a single measure of overall exposure.

In some instances, it may not be possible to identify or isolate the particular chemical or chemicals in a complex mixture or manufacturing process that are likely to pose a carcinogenic risk to humans, and so detailed exposure quantitation becomes difficult. Furthermore, tremendous variability in exposure exists among members of a population. People change jobs or place of residence, convert from well water to municipal water, occasionally take prescription/non-prescription drugs, etc. Each of these differences among persons contributes to the uncertainty associated with any exposure value. To the extent possible, the degree of uncertainty in exposures should be discussed and estimated. Characterization of uncertainty may involve calculation of a "worst-case" exposure or upper bound on exposures, consideration of a range of likely or possible exposure values, or even the computation of confidence bounds associated with a specific model-based exposure estimate.

C. Hazard or Dose-Response Assessment

Hazard or dose-response assessment is a quantitative exercise that attempts to describe the expected human response to any given level of a carcinogenic exposure. The response is typically characterized in terms of either a specific risk estimate or an upper bound on the underlying risk. This step in the risk assessment process relies heavily on data from exposed humans and on observations of animals employed in long-term cancer studies. Long-term animal screening studies have traditionally focused on the detection of carcinogenic potential. As a result, they are usually based on exposures at or near the test animal's maximum tolerated dose level. Since these doses are often orders of magnitude higher than those encountered by humans, some form of mathematical low-dose extrapolation procedure is required to estimate the expected response at the exposure levels typically of concern in the environment. In addition a species extrapolation or scaling factor is usually employed when estimating anticipated human cancer risk from experimental data. Low-dose extrapolation may also be an important consideration for epidemiologically-based assessments, since the available human data may often involve relatively high level occupational exposures.

1. Low-dose Extrapolation. Low-dose carcinogenic risk estimation is based on mathematical modeling that attempts to characterize explicitly the unknown, underlying relationship between exposure and response or to place an upper bound on the dose-response relationship.

Linear extrapolation procedures are often employed for estimating the low-dose risk. In the absence of background response a commonly used approach is to draw a straight line from an upper (binomial) confidence limit on the observed response rate at the study exposure level to the origin. If background is present, the procedure can be modified by making specific assumptions about the nature of background in order to take its effect into account *(9,10)*. Two of the more appealing features of this procedure are that it is easy to apply and that it will generate an upper bound on the unknown, underlying cancer risk in most instances. The most frequent criticisms directed against it are that it may be unduly conservative and that it fails to utilize all of the study data if several exposure levels are employed. Recently, an interesting modification of the linear extrapolation procedure has been proposed by a number of investigators *(11,12)*. They suggested that some type of mathematical dose-response model should be fit to the experimental data, that the estimated response and associated model-based confidence limit for a preselected level of exposure should be determined, and that linear extrapolation should then be used to determine an upper bound on risk for the low-dose level of interest.

When low-dose extrapolation is based on an attempt to characterize the underlying dose-response relationship, one of three general classes of models (i.e. tolerance distribution models, mechanistic models, or time-to-tumor models) is usually employed.

The tolerance distribution models assume that each member of a population has a threshold or tolerance level below which that individual will not respond to the exposure in question. It is also presumed that the variability among individual threshold levels can be described in terms of a probability distribution. For this class of models the probability that a particular individual will exhibit a carcinogenic response when exposed at dose level d is the same as the probability that the individual's tolerance level is less than d. The familiar probit, logit, and Weibull dose-response models can all be generated by adopting different probability distributions to describe the population's tolerance variability *(13)*. The best known of the low-dose extrapolation techniques based on tolerance distribution models is the Mantel-Bryan procedure *(14,15)*, which employs a probit model. Although the Mantel-Bryan procedure was originally regarded as a conservative approach to the estimation of low-dose risk since it employs a fixed, presumably conservative estimate of slope and extrapolates from an upper confidence limit on the observed experimental response, subsequent research *(16)* has shown that in the low-dose region the probit model tends to produce relatively high "safe-dose" estimates when compared to other extrapolation procedures. As a result of this characteristic and other criticisms that have been raised against the Mantel-Bryan procedure *(16)*, its use in quantitative risk assessment has markedly declined.

The class of mechanistic models, *i. e.*, the one-hit, multistage, and multi-hit models, derives its name from the presumed mechanism of carcinogenesis upon which the models in the class are based. Each of these models reflects the assumption that a tumor originates from a single cell that has been damaged by either the chemical or one of its metabolites.

The simplest of the mechanistic models is the one-hit model *(13)* which assumes that damage to the target cell sufficient to cause a tumor results from a single "chemical hit." This model is essentially linear in the low-dose region. Since it has only a single parameter other than background, it will not always provide an adequate fit to the experimental observations.

The multistage model, developed by Armitage and Doll *(17)*, is perhaps the most frequently employed of all low-dose extrapolation models currently in use. It reflects the observation that a developing tumor goes through several

different stages, which can be affected by the carcinogen in question, before it is clinically detectable. The multistage model will often be approximately linear in the low-dose region, and so its risk estimates are sometimes regarded as being relatively conservative. Furthermore, the procedures most commonly used to generate upper confidence bounds for the multistage model lead to estimates that are linear at low doses *(18)*.

The multi-hit model *(13,19)* assumes that the target cell must absorb at least k chemical hits before the cell achieves its carcinogenic potential. Some investigators regard the generalized multi-hit model, where k can be any non-negative value, as being more flexible than the multistage model; and its use in risk assessment has been recommended *(20)*. However, there are research results *(21)* that indicate a number of important, practical problems associated with its application, such as the fact that model hyperlinearity may produce extremely conservative estimates of safe dose levels, or that the multi-hit model can also indicate a "safe dose" at levels higher than some doses that actually produced deleterious effects.

The last class of models employed in low-dose extrapolation is the time-to-tumor models. These models, which attempt to describe the complex relationship between dose, tumor latency, and cancer risk, include the lognormal distribution (9), the Weibull distribution *(22)*, and the Armitage-Doll *(17)* and the Hartley-Sielken *(23)* models. While time-to-tumor models can lead in many instances to a more complete characterization of the underlying carcinogenic process, the quality of the available data may not permit their application or, at the very least, is often not sufficient to allow any discrimination among such models using goodness-of-fit criteria. Furthermore, a recent analysis *(24)* of a simulated data base containing information on time-to-tumor occurrence indicated that low-dose risk estimates generated by a variety of extrapolation procedures occasionally differed from the actual risk by three or more orders of magnitude even when this additional information was included in the modeling process. It also appeared that, on the whole, incorporation of time-to-tumor data did not substantially increase the precision of low-dose risk estimation relative to modeling based only on quantal response information.

When data on the time of tumor occurrence or detection are available, some investigators have proposed that alternative measures or risk based on the concept of time-to-tumor, such as the "mean-free" dose or "late-risk" dose *(25)*, be used in the cancer assessment process. However, a detailed evaluation of these measures *(26)* indicated that they suffer from a number of shortcomings and are probably most meaningful when used in combination with the more traditional measures, like the lifetime probability of tumor.

As the preceding discussion has indicated, uncertainties are involved in the use of any of the commonly employed extrapolation models. Furthermore, goodness-of-fit to the experimental observations is not an effective means of discriminating among models *(27)*. Thus, no single low-dose extrapolation procedure has yet gained universal acceptance within the scientific community.

Model selection is further complicated when background tumor incidence is present and presumed to be induced by a mechanism or mechanisms distinct from that associated with the chemical under study. In this instance the various mathematical models may fit the observable data equally well and still generate low-dose risk estimates that may differ by many orders of magnitude. On the other hand if background additivity is assumed, *i. e.*, if it is presumed that there is a common mechanism of tumor induction, then all models are essentially linear in the low-dose region *(28)*. Even if only a small portion of the background incidence is associated with the same mechanistic process as the study chemical, linearity will tend to prevail at sufficiently low doses *(29)*.

All of the preceding discussion has implicitly assumed that the carcinogenic dose-response relationship of interest is that which associates the probability of tumor onset with the administered dose or exposure levels. However, in the case of experimentally-derived data, saturation of critical enzyme systems may occur at high dose levels, and so the real dose of interest may be the biologically effective dose that reaches the actual target site. Since the relationship between the effective dose and the administered dose may be non-linear, pharmacokinetic considerations can significantly modify low-dose risk estimates regardless of the model employed *(30-33)*. Incorporation of mechanistic and pharmacokinetic data as well as information on target organ dose, when it is available, may, therefore, significantly enhance the usefulness of mathematical modeling procedures. In addition, consideration of any data on dose-dependent changes and differences in metabolism and repair, and appropriate adjustment for partial lifetime and intermittent exposure and competing risks might also reduce uncertainty associated with the mathematical modeling process.

2. Other Estimation Procedures. Traditionally, the approach to quantitative hazard evaluation for non-carcinogenic, toxicological endpoints has been based on the use of safety factors. With a safety factor approach an "acceptable" exposure level is determined by dividing the no observed effect level (NOEL) from laboratory-based chronic toxicity tests by an appropriately chosen safety factor. In theory the safety factor that is selected attempts to reflect both the possibility of an increased sensitivity of humans relative to laboratory animals and the variation in susceptibility within the human population.

In spite of its common use, there are a number of potential problems associated with the safety factor approach. The observation of no treatment-related effects at a given dose level may depend, at least in part, on the number of animals exposed at that particular level. Furthermore, the determination of a NOEL ignores the shape of the dose-response curve, even though it would seem that a curve that has a shallow slope in the experimental NOEL region potentially represents a greater toxicological hazard than one that rises steeply in this region. In addition, there is no biological justification for the general use of any specific safety factor. Another important consideration that would argue against the use of a safety factor approach in cancer risk assessment is the fact that this approach assumes the existence of a true population threshold below which no adverse effects can occur. Even if the concept of individual thresholds could be supported, the well-recognized genetic variability in the human population would effectively prevent the estimation of a general population threshold value. Moreover, given the high level of background cancer present in the human environment, it seems unlikely that one could rule out the possibility that a new chemical exposure, however limited, might augment an already ongoing mechanistic process and thereby produce a collective or additive exposure that exceeds the unknown threshold level *(34)*. While recent attempts to categorize carcinogens as acting directly or indirectly on the genome have renewed interest in the possible use of the safety factor approach, most scientists believe that

there is not sufficient biological understanding of these processes to make such classifications for the carcinogenic effect of an agent on the total organism at the present time *(35)* (see also Chapter 1). Even if this distinction is made, however, the implementation of a safety factor approach would still be problematical because of the various limitations of this procedure that have been discussed above.

Another measure that is occasionally proposed for use in cancer hazard evaluation is the relative potency index. Relative potency calculations are based on standard measures of toxicity, such as the ED50. Such measures are limited from an extrapolation viewpoint in that they attempt to compress an entire dose-response curve into a single number suitable for comparative purposes. Therefore, depending upon which toxicological measure underlies its derivation, a relative potency index may offer little insight into the relative risk in the low-dose region.

3. Extrapolation of Low-dose Risk Estimates to Target Populations. Low-dose risk estimates derived from laboratory animal data still must be extrapolated to the human population. This process is complicated by a variety of factors that differ among species and potentially affect the response to carcinogenic exposures. Included among these factors are differences between humans and experimental test animals with respect to life span, body size, genetic variability or population homogeneity, existence of concurrent disease, pharmacokinetic effects such as metabolism and excretion patterns, and exposure regimen (see also Chapter 1).

The traditional approach to the species extrapolation issue has been to use some standardized baseline for making interspecies comparisons. Commonly employed standardized dosage scales include mg/kg (body weight)/day, ppm in the diet or water, mg/m^2 (body surface area)/day, and mg/kg (body weight)/ lifetime. The choice of a particular dosage scale will obviously affect the magnitude of the projected risk. For example, calculating average daily dose on a body weight rather than a surface area basis can reduce the estimated human risk by approximately 6-fold when rat data are used for modeling human response and up to 14-fold for mouse data *(7)*. A number of studies *(36-38)* have used the few epidemiologic and laboratory data sets available in the literature involving comparable carcinogenic exposures to evaluate the relative reliability of these various scales for animal-to-human extrapolation. While no single scale emerged as the clear choice in all cases, it does appear that the best agreement between observed and predicted human cancer risk is often obtained when a mg/kg/day or a mg/m^2/day dosage scale is employed *(37,38)*. However, it must be emphasized that experience in this area is very limited and that the use of any standardized dosage scale for species scale-up is only a crude approximation to a more detailed adjustment that considers the spectrum of factors that can lead to differential species responses. Furthermore, recent research *(39)* into this issue has indicated that the previously observed *(38)* strong quantitative correlation of various agents' carcinogenic potencies in mice and rats may be explained by a corresponding correlation of maximum tolerated dose levels for these same agents. The general implications of this finding for quantitative species extrapolation are not fully understood at this time.

In addition to the empirical comparisons discussed above, there are a number of biological issues that bear on the choice of a particular dosage scale in species scale-up. For example, it may be important to know whether the parent compound, one or more of its metabolites, or some combination of the two, is responsible for the observed carcinogenic activity. Similarly, the nature of the biochemical target site and the various factors determining the rate, duration, and extent of the toxicologic reaction may be relevant to the selection process. However, while any meaningful information on the underlying carcinogenic mechanism(s) should, if possible, be taken into account when choosing a dosage scale, such specific information often will not be available.

While no extrapolation across species is involved when epidemiological data are used in risk estimation, the marked variability in human sensitivity must be taken into account. Furthermore, there are a number of other problems that may be encountered with attempting to use epidemiological data to construct estimates of lifetime risk for a subset of the general population. In the absence of specific knowledge about the synergistic or antagonistic potential of the exposure of interest, additivity of effects is often assumed. This assumption can lead to either an under or over estimation of the true carcinogenic risk presented by the exposure under consideration.

Epidemiological investigations are often conducted for only a limited period of time,and failure to adjust properly for incomplete follow-up of subjects can significantly affect the estimation of lifetime risk. Similarly, estimation of lifetime cancer risks is also complicated if the available epidemiological data involve exposures that fall far short of a normal lifespan. For example, if a multistage mechanism is assumed, then the effect of early termination of exposure will be dependent on the stages of the carcinogenic process that are influenced by the exposure *(40,41)*.

D. Risk Characterization

The final step in the risk assessment process, risk characterization, typically involves a multidisciplinary evaluation of all relevant data including the qualitative evidence regarding the likelihood that the chemical in question poses a human cancer hazard, available information on potential or actual human exposure, and the quantitative results of dose-response and species extrapolation modeling. The strengths and weaknesses, the biological relevance, and the quality of all data used to develop the characterization of the human cancer risk associated with anticipated or known exposures should be considered, and an attempt to qualify or quantify the various uncertainties in the characterization of risk should be made when possible.

As discussed earlier, the qualitative evidence is evaluated by a weight-of-the-evidence approach. Uncertainties in the data are resolved using best scientific judgment. While no overall measure can be given of the uncertainty, the decision-maker needs to be aware of the strengths and limitations of the qualitative data involved in the risk characterization process. The results of a total risk assessment should be expressed in such a way that there is a clear distinction drawn between a chemical for which the qualitative evidence is overwhelming and a chemical for which the qualitative evidence is only marginally persuasive.

As developed in Chapter 5, the exposure assessment may contain numerous uncertainties. For example, the assessment may reflect inherent limitations, such as those associated with analytical monitoring or modeling techniques. Further, assumptions are sometimes necessary in the absence of data in order to generate an assessment; *e. g.*, the amount of soil ingested by a child. In many such instances, "worst case" assumptions are made in an attempt to err on the side of public safety. The exposure assessment should be expressed in such a way that these uncertainties and assumptions are evident to the decision-maker.

Description of uncertainty is also important in the development of the quantitative estimates from dose-response and species extrapolation modeling. Unfortunately, the description of uncertainty in this step of the assessment process has often been limited to a description of the statistical uncertainty involved in low-dose extrapolation as expressed through the calculation of confidence limits for risk estimates.

As has already been noted, the choice of a particular low-dose extrapolation model can have a pronounced influence on the estimated low-dose risk. Therefore, it has been proposed *(42)* that an indication of the variability introduced by model selection be obtained by considering the range in the magnitude of low-dose risk estimates associated with the more commonly employed models.

Furthermore, if laboratory data are utilized in estimating low-dose risk, some attempt can be made to describe the biological variability associated with the process of species scale-up by contrasting estimates based on different dosage scales and animal test systems.

Finally, it is important in the characterization of human cancer risk to summarize briefly any judgments or assumptions that may have entered into the risk assessment process to insure that they are clearly differentiated from scientific fact *(1)*.

III. EMERGING AREAS OF SCIENCE EXPECTED TO IMPACT ON REGULATORY ACTIONS

Although no one can predict with certainty what and when major breakthroughs will occur in science, many emerging areas of science can be expected to significantly affect cancer risk assessment and related regulatory decisions in the future.

Greater knowledge of the metabolic pathways of chemical compounds and the pharmacokinetics of such agents in various animal species should help regulatory agencies to ascertain better whether carcinogenicity tests have been performed in an animal assay system which is relevant to man. Information on metabolic pathways for activation of a chemical carcinogen known to be important in humans but not present in the animal assay system used will influence the data evaluation and interpretation for human risk estimation. Similarly, factors such as diet, age, stress, sex, hormonal status, etc. can influence the metabolic conversion of chemicals to ultimate carcinogens and may be important in hazard evaluations conducted on proposed compounds.

DNA adducts remaining in organs *in vivo*, in the absence of tumors in a test animal species, may be innocuous; may indicate physiological peculiarities in the test system that prevent progression to overt tumors; or may suggest that overt manifestation to neoplasm has yet to take place. Such inhibitory factors may or may not be present in other assay systems or in man. Alternatively, failure to demonstrate tumor formation may indicate the need for promoter activity or interaction with other modifying agents. Substantial adduct formation without resulting biological manifestations may suggest either that the lesions induced are innocuous or dictate that more testing is needed to access the human exposure experience (*i. e.*, multiple exposure factors, promoting agents, nutrition, etc.). In any event, it is evident that additional research is required to define more precisely what DNA adduct formation means in term of human risk.

Most prescreen assays for chemical carcinogens presently rely primarily on chemical interaction with DNA (point mutation assays, DNA damage and repair). This approach may be inadequate since certain chemicals may not induce cancer by direct interaction with the DNA. New assays for carcinogenicity are being developed to include animal models where these factors can be taken into consideration in the evaluation of chemical agents.

Since tumor induction is generally considered to be a multi-stage process, each stage may be under independent genetic control. Test systems are being developed and used that are based on animals believed to be defective in genetic factors similar to those defects that predispose humans to cancer induction. Such test systems may also be used to screen sensitivity to selected carcinogens for subpopulations of humans with similar genetic characteristics.

A relationship seems to exist between altered DNA and carcinogenesis. The presence of carcinogen-altered DNA is being explored as a possible test system to detect persistent damage at the molecular level after exposure to suspect carcinogenic chemicals. Such a system could be used to screen exposed human populations for altered DNA bases using monoclonally-derived specific antibodies to modified bases. Such assays may also help place in perspective effects on the DNA arising from endogenous vs. exogenous DNA damaging agents. This screening would be an example of using a marker for altered cells important to the carcinogenic process. Additional biomarkers should be developed for cells in all stages of carcinogenesis. Such tests might be expected to identify the carcinogenic potential of suspect agents and the population(s) at risk for possible future development of cancers.

Certain DNA base alterations may occur in regions of the genome that currently seem to be unimportant for carcinogenesis. It is important to know which alterations are necessary for initiation of a tumor cell and which are masked or not expressed. Information is being assimilated on types of alterations in "control" regions and the relationship of the number of altered bases in these regions to tumor formation. These data should provide information needed to differentiate those insults to DNA that are critical from those that are not. If multi-critical sites must be altered in a particular manner, this approach may be used to examine multi-stage phenomena of cancer. The measurement of risk from particular carcinogens at the cellular level would then be based on a more selective effect than the level of total DNA adducts.

Other areas of research that may in time have an effect on regulatory decisions include the development of model systems to assay for compounds influencing promotion and progression of initiated populations, elucidation of factors controlling cellular differentiation, and tests for chromosomal rearrangements and oncogene activities and the development of computer-based techniques for both the identification of the portions of molecules that are important in carcinogenesis and the modeling of animal (the "computer mouse") and human response to tumor induction. Each of these areas of study will not only expand our knowledge of mechanisms but may also permit a more realistic assessment of risk. Besides improving assessment, increased knowledge of mechanism may also result in a greater ability to render carcinogenic agents biologically innocuous, removing hazards.

IV. SUMMARY

The assessment of human cancer risk associated with different chemical exposures is seen to be a complex mixture of currently available scientific data, assumptions and judgments based on prevailing scientific thought, and policy decisions. The process involves the identification of potential human cancer hazards, usually based on epidemiological, clinical, and long-term animal studies, the determination of potential human exposure profiles, the estimation of the unknown, underlying

relationship between exposure and response, and, finally, the combination of the results of these exercises to characterize the expected human cancer risk. Some degree of uncertainty is involved in all phases of this process, and as a result, no simple, standardized format has yet been developed for evaluating human cancer risk, even though a number of basic principles have emerged. It is apparent that human cancer risk assessment is still in an evolutionary state and that a number of emerging areas of science will impact on this process in the future.

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Thursday
March 14, 1985

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 121

Emergency Medical Equipment; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 121

[Docket No. 21369; Notice No. 85-9]

Emergency Medical Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require certificate holders to provide medical kits containing equipment and drugs for use in the treatment of injuries or medical emergencies that might occur during flight time. The notice further proposes to require each certificate holder to report such medical emergencies and describe how the medical kit was used, by whom, and the outcome of the medical emergency annually for 2 years after implementation of the rule. The intended effect of this proposal is to enhance the potential for diagnosis and initial treatment of medical emergencies during flight time.

DATE: Comments must be received on or before July 12, 1985.

ADDRESS: Comments on this proposal are to be marked "Docket No. 21369" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21369, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Lawrence Bedore, Project Development Branch, (AFO-240), Air Transportation Division, Office of Flight Operations, telephone (202) 426-8096, or Andrew F. Horne, Biomedical and Behavioral Sciences Division, (AAM-510), Office of Aviation Medicine, telephone (202) 426-3433, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impacts that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate 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 Docket No. 21369." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this 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) 426-8056. 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. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

By letter and petition dated March 3, 1981, Sidney M. Wolfe, M.D., and Eve Bargmann, M.D., Public Citizen Health Research Group of the Aviation Consumer Action Project (ACAP), 2000 P Street, NW., Washington, D.C. 20036, petitioned to amend §§ 21.309(d) and 121.333(e)(3) of the Federal Aviation Regulations to require the carriage of emergency medical equipment on commercial flights. That petition was published verbatim in the **Federal Register** on August 20, 1981 (46 FR 42278). The FAA received comments from 370 interested persons on that petition for rulemaking.

Those commenters expressing support of the proposal indicate that U.S. air carriers should be required to have on board their airplanes emergency medical equipment and medication that would enable crewmembers and/or medically qualified passengers to respond to any in-flight medical emergency.

A number of physicians describe their involvement in in-flight medical emergencies. Those emergencies include such conditions as myocardial infarction, allergic reaction to food, acute asthma, epileptic seizures, and childbirth. Several commenters provide suggestions as to the specific types of emergency equipment and medication that should be carried.

Those commenters opposing the proposal express concern about the potential added cost to the traveler and the possible use of medical equipment and/or medication by unqualified individuals.

The FAA analyzed the comments and concluded that under the provisions of the Federal Aviation Act of 1958, the agency had the authority to require air carriers to provide reasonable medical equipment and medicine necessary for the treatment of those injuries or illnesses likely to be caused or induced by flight. However, the FAA noted that if the proposals presented in the ACAP petition were adopted, air carriers would be required to provide equipment and medicine to handle general health emergencies unrelated to flight or not shown to affect aviation safety. Although carriers were free to add this equipment if they wished, the agency did not have the authority to promulgate such a broad rule.

In addition, even if the FAA had the authority to make it mandatory for air carriers to supply their aircraft with medicine and equipment to treat general health emergencies, the wisdom of such a regulation appeared at that time to be questionable. In a report published in "Aviation, Space and Environmental Medicine" in March 1982, the Commission on Emergency Medical Services of the American Medical Association stated that the addition of potent drugs and surgical instruments to first-aid kits on board aircraft would create a potential for misuse by unqualified persons during in-flight emergencies.

After a thorough analysis of the ACAP petition and the comments received in response to that petition, the FAA concluded that rulemaking, as proposed, was not justified. A Denial of Petition was issued to ACAP on May 19, 1982.

Thereafter, the petitioners requested the United States Court of Appeals for the District of Columbia Circuit to review the issue of whether the FAA lacks statutory authority to institute rulemaking to upgrade the quality of first-aid kits currently carried on board

commercial aircraft. In its decision (Eve Bargmann, M.D., et al., v. FAA, 715 F.2d, 638 (D.C. Cir. 1983)) the court held that the FAA has the statutory authority to proceed with rulemaking on the subject if it deems that such action is advisable based on merit.

Discussion

As a result of the court's decision, the FAA has again reviewed the ACAP petition and the comments received in response to its publication in the **Federal Register**. The majority of physicians who commented on the ACAP petition agree that the first-aid kits now required on aircraft by Part 121 of the Federal Aviation Regulations are inadequate for purposes of diagnosing and treating most in-flight medical emergencies. These physicians strongly recommend that diagnostic equipment be provided on all flights as well as equipment and medication that may be used for the treatment of medical emergencies that may be expected to occur. Many of these physicians indicate the need for "Good Samaritan" legislation to protect those that use the medical equipment to treat in-flight medical emergencies from liability. While such protection may be desirable, the absence of this legislation should not diminish the effectiveness of this proposal, if adopted. Notably, such legislation is beyond the scope of an FAA proposal since it is a legislative matter.

Upon reconsideration, the FAA now believes that additional medical equipment and frequently required medications should be available for use on passenger flights, during flight time, by qualified persons who may be called upon by crewmembers to provide assistance in initial treatment when medical emergencies occur. One proposed medical kit would be required on each passenger-carrying flight and should contain equipment and drugs required to provide basic life support during medical emergencies that might occur during flight time, such as myocardial infarction, severe allergic reactions, acute asthma, insulin shock, protracted seizures, and childbirth. Accordingly, the medical kit should include the following equipment and medication:

1. Diagnostic equipment
   a. Sphygmomanometer
   b. Stethoscope
   c. Flashlight
2. Airway equipment
   a. Oropharyngeal airways (3 sizes)
   b. Equipment necessary to establish a tracheal airway
3. Surgical equipment
   a. Alcohol sponges
   b. Hemostats (2)
   c. Scalpel
   d. Scissors
4. Syringes and needles (those necessary to administer required drugs)
5. Intravenous administration set
6. Drugs, parenteral
   a. Analgesic: Morphine sulfate
   b. Antiarrhythmic
      (1) Lidocaine hydrochloride
      (2) Atropine sulfate
   c. Drug for acidosis: Sodium bicarbonate
   d. Anticonvulsant/Anxiolytic
      (1) Amobarbital
      (2) Diazepam
   e. Antiemetic: Prochlorperazine
   f. Drugs for acute allergic reaction and bronchospasm
      (1) Epinephrine
      (2) Diphenhydramine hydrochloride
      (3) Adrenocortical steroid
      (4) Aminophylline
   g. Drug for hypoglycemic shock: 50% dextrose injection
   h. Intravenous fluid for drug administration: 5% dextrose injection, 250cc
7. Drug for oral administration: Antianginal: Nitroglycerine, sublingual
8. Basic instructions for use of the drugs in the kit

The medical kit will contain drugs with expiration dates and battery-powered equipment. The kit, therefore, must be maintained appropriately through inspection, in accordance with Part 121, Subpart L, at intervals required for replacement of drugs before the expiration date and to assure that the equipment is working properly.

Since a requirement to report airline passenger medical emergencies unrelated to flight does not exist, substantial data are not available to the FAA regarding the present incidence of in-flight medical emergencies, the types of emergencies that occur, treatment provided, and the results of treatment. This notice, therefore, proposes that each certificate holder must maintain records on each medical emergency occurring during flight time resulting in use of the required emergency medical kit, diversion of the aircraft, or death of a passenger or crewmember for a period of 24 months commencing with the effective date of any amendment resulting from this proposal. These records will include a description of how the required emergency medical kit was used, by whom, and the outcome of the medical emergency. The notice further proposes that the certificate holder must submit these records, or a summary thereof, to its assigned FAA Principal Operations Inspector within 30 days after the end of each such 12-month period.

In making this proposal, the FAA recognizes that complex issues remain regarding any medical kits to be carried in operations conducted under Part 121 of the regulations. Issues requiring regulatory consideration that are not addressed by ACAP in its petition, nor by public comment in the **Federal Register** publication, include determining who would be considered qualified to use the proposed kit, the user's licensing requirements, and whether or not the kits should be required on all flights or limited to flights of long duration where diversion to a surface facility is not possible. This proposal does not address these issues; however, public comment on these issues is invited.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements contained in this proposal (121.715) have been submitted to OMB for review. Comments on the requirements should be submitted to the Office of Information and Regulatory Affiars (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone 202–395–7340). A copy should be submitted to the FAA Docket.

Economic Evaluation

The total costs of implementing the proposal to require energency medical kits include the cost of equipping existing passenger aircraft which will become subject to the rule, the installation of emergency medical kits in new aircraft manufactured during the 10-year period covered by this evaluation, the fuel penalty resulting from the added weight of the emergency medical kits, and the maintenance costs.

The assumption is that each aircraft will be equipped with one emergency medical kit regardless of the number of individual first-aid kits on the aircraft. The FAA has estimated that such emergency medical kits can be purchased and installed for approximately $300 per unit. The cost of equipping existing passenger aircraft with emergency medical kits has been estimated to be approximately $700,000 (2,333 aircraft × $300).

Indications are that approximately 140 aircraft will be deliverd annually for Part 121 passenger operations during the 10-year period following implementation of the proposal. The total discounted present value is approximately $271,000 for equipping newly manufactured aircraft with emergency medical kits.

To determine the fuel costs for the additional weight of the emergency medical kits, the FAA Estimates that

during each year of the 10-year period following implementation of the proposal, an average of 3,103 emergency medical kits will be aboard passenger aircraft operated under Part 121. Each emergency medical kit weighs approximately 10 pounds, and each additional pound weight will result in an estimated average fuel consumption of 15 gallons per year per aircraft. Based on a fuel price of 89.4 cents per gallon, each emergency medical kit will result in an average additional fuel cost of slightly more than $134 per year. The present value cost of the additional fuel consumption during the 10-year period is estimated to be $2,681,000.

Maintenance costs for the emergency medical kits are based on an average requirement of 2 person-hours in labor annually, assuming that the average wage rate (including benefits) will be $35 per hour and that 10 percent of the emergency medical kits will require replacement at a unit cost of $300. The present value of maintenance cost is estimated to be approximately $2 million.

Modification of the requirements for instruction in the handling of emergemcy situations under § 121.417(b)(3)(iv), to include familiarization with the emergency medical kit, results in a negligible increment of training time. Therefore, no additional cost is ascribed to this modification.

The costs for creating and maintaining records on how the required emergency medical kit was used, by whom, and the outcomes of medical emergencies are based on an expected average requirement of 1 person-hour in labor per medical emergency. The costs for submitting these records or a summary to the FAA is a negligible amount of time and expense for postage and handling of the reports. Although the proposed additional 121.715 requires record maintenance for 2 years, FAA anticipates that after 2 years these records will continue to be created and maintained voluntarily for other reasons, including standard policies and procedures relating to liability insurance and handling of controlled substances. Assuming that the average wage rate (including benefits) will be $35 per hours, and that an average of 2,500 medical emergencies would occur in flight per year, the present value of in-flight medical emergency costs for creating and maintaining records is estimated to be approximately $564,000.

The present value of all estimated costs resulting from the emergency medical kit proposal during the 10-year period following the implementation is $6,216,000.

The FAA cannot estimated easily the prospective number of lives that may be saved or the reduction of in-flight morbidity by providing additional equipment and medications, but some insight into the potential benefits can be gained from a major air carrier's experiences with in-flight deaths and in-flight medical emergencies. A major commercial air carrier under part 121 had tracked in-flight deaths for approximately 4 decades.

The FAA has estimated the number of in-flight deaths occurring annually for all carriers by calculating the proportion of the annual number of deaths in flight to the annual number of passengers carried by the major carrier. Then, the same proportion of annual "estimated in-flight deaths" is applied to the total annual number of passengers carried by all Part 121 carriers.

Using this method of analysis, the FAA estimates that over a period of 4 decades, approximately 840 in-flight deaths occurred on all carriers. Moreover, the number of deaths in flight, as a proportion of passengers carried, has grown progressively smaller in successive years as the number of annual enplanements has increased at a rapid rate. The annual in-flight deaths vary in number within a small range, and the FAA further estimates that approximately 21 deaths currently occur in flight annually. These estimates are based upon historical information provided to the FAA by an air carrier.

Public estimates of in-flight deaths range to 100 annually. (See Docket No. 21369.)

From historical information, the FAA estimates that a great majority of the in-flight passenger deaths are elderly people suffering from terminal illnesses such as cancer and heart disease. Many of these in-flight deaths occur quietly and without others being aware of the onset of the medical emergency. However, some in-flight deaths can be prevented with the proposed rules. The number who might be saved is uncertain, but based on fragmentary information obtained from airline data, the estimate is about 10 percent of in-flight deaths. This, according to FAA estimates (21) and public estimates (100), about 10 percent of the annual in-flight deaths, or 2 to 10 persons, might have been helped annually by an emergency medical kit.

For purposes of economic studies, the FAA values a life at $850,000 in 1983 dollars. The expected number of lives that could be saved over the 10-year period is 21 to 100. The expected present discounted value of the lives that could be saved over the 10-year period ranges from $8.4 million to $41.9 million. This is derived by discounting the value of life at a 10 percent rate.

Based on these estimates, the benefit/cost ratio ranges from a low value of 1.35 ($8.4 million÷$6.2 million) to a hight of 6.75 ($41.9 million÷$6.2 million). The FAA's preliminary judgment is that the lower ratio will prevail. Clearly, information furnished in the comments to this NPRM will help in refining estimates about future costs and benefits.

Trade Impact

The proposals will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. The proposals will affect only U.S. air carriers because foreign air carriers are not subject to Part 121. Foreign air carriers are prohibited from operating between points within the United States; therefore, they will not gain any competitive advantage over the domestic operations of U.S. carriers. In international operations, foreign air carriers would realize some minor cost advantages over U.S. air carriers if the foreign countries do not require similar emergency medical equipment. However, these costs are negligible in comparison to the overall costs of providing international passenger services; therefore, the proposed rule change will essentially have no trade impact.

Regulatory Flexibility Determination

The small entities affected by the proposal are the small air carriers which are regulated under Part 121. The FAA has published a size threshold of nine or fewer operating aircraft as a standard for small air carriers. According to FAA data for the period ending April 1983, 45 passenger air carriers which were subject to Part 121 operated nine or fewer aircraft.

The impact on small entities will be in direct proportion to the number of aircraft they will be required to equip with the emergency medical kit. The average annualized net compliance cost for a small carrier to meet the emergency medical kit requirements is estimated to be approximately $308 per aircraft. The FAA has adopted threshold values that define small entities and significant economic impact, and these values are stated in FAA Order 2100.14. The threshold values for economic impact are adjusted for inflation and are expressed here in 1983 dollars. The threashold value for small entity carriers is a maximum number of nine aircraft owned or operated. The threshold

values for significant economic impact are an annualized cost of $47,506 for scheduled carriers and $3,314 for unscheduled carriers.

Since the annualized cost per aircraft is $308 per year, a small entity carrier with the maximum number of aircraft, nine, would not meet the cost impact criteria for either scheduled or unscheduled air carriers (9×$308 is less than $3,314). Therefore, this proposal is not expected to have a signficant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Conclusion

Since the proposal contained in this document would enhance the potential for diagnosis and initial treatment of in-flight medical emergencies, and the proposal could possibly save two lives per year, the estimated benefits exceed the estimated costs of implementing this proposal. For the reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act, these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the proposal does not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this regulatory action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 11

Reporting and recordkeeping requirements.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air Transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Narcotics, Drugs, Pilots, Transportation, Common carriers.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 11 and 121 of the Federal Aviation Regulations (14 CFR Parts 11 and 121) as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. By amending § 11.101 by adding a new OMB Control Number to the table in paragraph (b), as follows:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)***

121.715	2120–XXXX

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

2. By amending § 121.309 by revising paragraph (d) to read as follows:

§ 121.309 Emergency equipment.

* * * * *

(d) *First-aid emergency medical equipment.* Approved first-aid kits and, on passenger flights, an emergency medical kit for treatment of injuries or medical emergencies that might occur during flight time or in minor accidents must be provided and must meet the specifications and requirements of Appendix A.

* * * * *

3. amending § 121.417 by revising paragraph (b)(3)(iv) as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(b) * * *

(3) * * *

(iv) Illness, injury, or other abnormal situations involving passengers or crewmembers to include familiarization with the emergency medical kit; and

* * * * *

4. By adding a new § 121.715 as follows:

§ 121.715 In-flight medical emergency reports.

(a) For a period of 24 months commencing with the effective date of this rule, each certificate holder shall maintain records on each medical emergency occurring during flight time resulting in use of the emergency medical kit required under Appendix A, diversion of the aircraft, or death of a passenger or crewmember. These records shall include a description of how the medical kit was used, by whom, and the outcome of the medical emergency.

(b) The certificate holder shall submit these records, or a summary thereof, to its assigned FAA Principal Operations Inspector within 30 days after the end of each 12-month period during the 24 months specified in paragraph (a) of this section.

5. By amending Appendix A to Part 121 by revising the title, by adding a subheading before the current text, and by adding a new subheading and text as follows:

5. By amending Appendix A to Part 121 by revising the title, by adding a subheading before the current text, and by adding a new subheading and text as follows:

Appendix A—First-Aid Kits And Emergency Medical Kits

First-Aid Kits

* * * * *

Emergency Medical Kits

The approved emergency medical kit required by § 121.309 for passenger flights must meet the following specifications and requirements:

(1) Approved emergency medical equipment shall be stored securely so as to keep it free from dust, moisture, and damaging temperatures.

(2) One approved emergency medical kit shall be provided for each aircraft during each passenger flight and shall be located so as to be readily accessible to crewmembers.

(3) The approved emergency medical kit must contain, as a minimum, the following appropriately maintained contents in the specified quantities:

Contents	Quantity
Sphygmomanometer	1
Stethoscope	1
Flashlight	1
Surgical scissors	1
Scalpel	1
Hemostats	2
Airways, oropharyngeal (3 sizes)	3
Tracheal airway set (Tracheostomy or endotracheal intubation)	1
Syringes (sizes necessary to administer required drugs)	4
Needles (sizes necessary to administer required drugs)	6
Intravenous administration set	1
5% Dextrose injection, 250cc	1
50% Dextrose injection, 50cc	1
Morphine sulfate injection, single dose ampule or equivalent	2
Lidocaine HCl injection, single dose ampule or equivalent	2
Atropine sulfate injection, single dose ampule or equivalent	2
Sodium bicarbonate injection, single dose ampule or equivalent	1
Epinephrine 1:1000, single dose ampule or equivalent	2
Adrenocortical steroid injection, single dose ampule or equivalent	1
Diphenhydramine HCl injection, single dose ampule or equivalent	2
Aminophylline injection, single dose ampule or equivalent	1
Prochlorperazine injection, single dose ampule or equivalent	1
Amobarbital injection, single dose ampule or equivalent	1
Diazepam injection, single dose ampule or equivalent	2
Nitroglycerine tablets	10
Basic instructions for use of the drugs in the kit	

(Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 2, 1983); 14 CFR 11.45)

Issued in Washington, D.C., on September 20, 1984.

John S. Kern

Acting Director of Flight Operations.

[FR Doc. 85–6031 Filed 3–13–85; 8:45 am]

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federal register

Thursday
March 14, 1985

Part IV

Department of Labor
Employment and Training Administration

Department of Agriculture
Food and Nutrition Service

Department of Health and Human Services
Social Security Administration
Health Care Financing Administration

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs; Proposed Rules

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 275

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Health Care Financing Administration

45 CFR Parts 205, 206 and 232

42 CFR Parts 431 and 435

Income and Eligibility Verification Procedures for Food Stamps, Aid to Families With Dependent Children, State Administered Adult Assistance, Medicaid and Unemployment Compensation Programs

AGENCIES: Employment and Training Administration, Labor; Food and Nutrition Service, USDA; Social Security Administration and Health Care Financing Administration, HHS.

ACTION: Proposed rules.

SUMMARY: The Secretary of Health and Human Services, the Secretary of Labor and the Secretary of Agriculture jointly propose rules to implement section 2651 of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98–369). This section requires State agencies that administer the Unemployment Compensation program, the Food Stamp program, the Aid to Families with Dependent Children (AFDC) program, the adult assistance programs (Titles I, X, XIV and XVI (AABD) of the Social Security Act) and the Medicaid program to develop an income and eligibility verification system which meets certain statutory requirements.

DATES: Comments must be received on or before April 29, 1985. Comments should be sent to the address specified in the agency regulations.

FOR FURTHER INFORMATION CONTACT:

For AFDC and Adult Programs: Barbara M. Levering, Office of Family Assistance, Social Security Administration, 2100 Second Street, SW., Washington, D.C. 20201, (202) 245–2637.

For Medicaid: Joyce G. Somsak, Director, Office of Quality Control Programs, BQC, Health Care Financing Administration, DHHS, Room 239, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21203, (301) 597–1354.

For Food Stamps: Bonny O'Neil, Director, Program and Planning, Development and Support Division, Family Nutrition Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3414.

For Unemployment Compensation: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, Room 6112, Washington, D.C. 20201, (202) 376–6636.

SUPPLEMENTARY INFORMATION: We are proposing separate regulations for the AFDC and Adult Assistance programs, the Medicaid program, the Food Stamps program, and the Unemployment Compensation program. Four sets of proposed rules are being published concurrently. Each of these proposed rules includes a discussion of issues and proposed regulatory revisions as they apply to the specific program. In addition, there are a number of issues which are common to the four programs. These issues are discussed in the common preamble section that follows.

The SSI program, by virtue of its role in the determination of eligibility of a large number of Medicaid applicants and recipients, becomes a significant participant in the system of eligibility verification. While not issuing separate regulations, the SSI program is in the process of implementing programmatic changes utilizing income and wage data that will affect its applicant and recipient eligibility verification determination process. The common preamble briefly mentions these actions.

The requirements of the Adult Assistance programs are identical to the requirements of the AFDC program. For purposes of readability this discussion of common issues does not make specific references to the Adult Assistance programs. Specific references are made in regulatory text and preamble section governing these programs, but it should be understood that its applies to the OAA, AB, APTD and AABD the same as to AFDC.

Regulatory Impact

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major" rule. A "major" rule is one which would result in annual effect on the economy of $100 million or more; result in a major increase in costs or prices; or have significant adverse impacts on competition, employment, or productivity.

These provisions of the Deficit Reduction Act will have two types of impact. First, they will reduce Federal and State costs in the covered programs through identification of ineligible cases and through more accurate benefit determination. Second, they will create adminstrative costs necessary to perform required computer matching. Overall, computerized income and eligibility verification procedures are a highly cost-effective means of improving the accuracy of eligibility and benefit determination in these programs. Present efforts in this area, primarily by State welfare agencies, are already very substantial, and most States can accommodate these provisions with relatively minor modification.

We estimate that the Federal progam savings attributable to these provisions will be approximately $200 million annually once fully implemented. State savings will exceed $100 million annually. The President's Private Sector Survey on Cost Control (the Grace Commission) and the Congressional Budget Office both estimated even higher annual savings from improving income and other resource verification. However, these estimates did not distinguish between savings resulting from current reform efforts and new inititives, or reflect the latest and best technical data.

Regardless, these impacts are due, for the most part, to the impact of section 2651 of the Deficit Reduction Act. The discretionary latitude afforded the Federal agencies is very small, and these proposed rules would not create substantial requirements not mandated by law. Therefore, these impacts are not the result of these proposed rules, and the proposed rules do not meet the definition of major of E.O. 12291.

The regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for each proposed rule with a significant economic impact on a substantial number of small entities. For the reasons given above, and because the principal impacts are on individuals and States, not small entities, such an analysis is not required for these proposed rules.

Although we believe that the implementation costs of these proposed rules will be small relative to current matching costs, we invite comment on any alternatives which might reduce unnecessary burden or improve the effectiveness of the proposed systems.

A. Background and Objectives

DEFRA amended the Social Security Act, the Food Stamp Act and the Internal Revenue Code for the purpose

of establishing procedures for requesting and using income and eligibility information in the administration of certain Federally assisted benefit programs. Section 2651 of DEFRA makes the requirement effective April 1, 1985. Such requests, exchanges and uses are to be made to the extent that the information may be useful in verifying eligibility and benefit amounts. This statutory provision augments the requirement for wage matching for the Food Stamp and AFDC Programs by including the Medicaid and Unemployment Compensation Programs and requiring access to and use of other sources of data.

The broader State Income Eligibility Verification System (SIEVS), in this proposed rule, requires State Wage Information Collection Agencies (SWICAs) to provide wage and benefit data, the Social Security Administration (SSA) to provide wage, benefit and other income data, and the Internal Revenue Service (IRS) to provide unearned income data. Programs required to exchange information are: The Food Stamp Program (FSP); Aid to Families with Dependent Children AFDC); Unemployment Compensation (UC); Medicaid; and the adult assistant programs (Titles I, X, XIV and XVI (AABD) the Social Security Act).

Information about wages, unearned income and benefits can be extremely useful to State agencies administering these benefit programs if periodically provided, independent of applicant or recipient reports. These rules propose requirements designed to ensure that State agencies avail themselves of that information and use it effectively. These proposed rules recognize the need for differently structured verification systems State-to-State by allowing State agencies to work out procedures, within the constraints of their existing and planned resources and administrative structure, which will help to ensure the accurate determination of eligibility and amount of benefits.

In the early 1970s, a number of States instituted systems for matching their AFDC caseloads with wage information obtained by the State Employment Security Agencies (SESAs). Shortly thereafter, the Federal government added to this momentum by conducting some computer matches of its own. Particularly significant in this regard was Project Match, carried out in 1977 by the Department of Health, Education and Welfare which compared Federal employee files with AFDC and Medicaid files. The success of this match gained national attention and helped to spread awareness of how computer matching could be used effectively to detect and prevent error and fraud in benefit programs.

Subsequently, Congress mandated that all States conduct wage matching first in the AFDC program in October 1979 and later in the Food Stamp Program as of January 1983. During the same period, many States became interested not only in wage matching but in other types of matching as well. As caseloads increased and technology improved, computer matching with other government agencies and private institutions, such as employers and banks, came to be perceived as a valuable and efficient tool in the management of the benefit programs.

The income and eligibility verification provisions of DEFRA are derived from the success of these matching activities and the findings of numerous studies by the General Accounting Office (GAO), the President's Council on Integrity and Efficiency (PCIE), the Inspectors General of the various Federal government departments and the President's Private Sector Survey on Cost Control. Congress has recognized the need to provide State benefit programs with all available information about wages and other sources of income collected by certain government agencies. DEFRA gives the Secretaries of Health and Human Services, Agriculture, Labor and Treasury the authority to specify how this information should be used and safeguarded. In drafting these proposed rules, we have reviewed the findings of all the parties listed above.

The purpose of using available information to verify program participant elibilility is to improve the accuracy of program eligibility and benefit determination. In so doing the agencies will be able to improve program integrity by directing limited resources to those individuals who are legally eligible for program benefits. This improved program integrity will result in a general public and participant perception that the welfare programs are fair and equitable. Finally, when fully operational the income and eligibility verification procedures will aid in the reduction of the budget deficit.

As in any administrative procedure that involves the use of automated systems, there is the potential danger that information gained through the use of these systems will be misused and result in a violation of client rights. The program's intent to protect the rights of the individual participant is reaffirmed by regulations that are meant to assist the States in affording adequate protection of a participant's right to privacy and due process. For example, the regulations provide for notice to participants prior to any reduction or termination of benefits. The regulations also provide the participant the opportunity for a fair hearing.

DEFRA requires that each State have a Statewide Income and Eligibility Verification System (SIEVS). This implies a level of consistency among programs and across States not previously achieved. The Conference Report adds that Congress did not intend that all States have identical systems. Although the legislation itself does not contain a description of the kind of system Congress envisioned, it is clear from the recommendations of the President's Private Sector Survey of Cost Control and other studies which prompted Congressional action that Congress envisioned a SIEVS in each State that would assure the timely and efficient exchange of information among programs. We view the statutory requirement for a SIEVS as mandating a logical process and not necessarily a specific physical system.

DEFRA explicitly requires that the programs participating in the verification system must adhere to standardized formats and procedures established by the Secretary of Health and Human Services in consultation with the Secretary of Agriculture for purposes of exchanging information with each other and for providing information to administrators of the Child Support Enforcement (CSE), Old Age Survivors and Disability Insurance (OASDI) and the Supplemental Security Income (SSI) Programs.

Even without this requirement, the confidential nature of the information which benefit programs are required to use and the potential volume of such information and costs of acquiring it would require States to develop coordinated approaches to the access, maintenance and use of the information. Some uniformity among State systems will also occur because of the need to access IRS and SSA information in accordance with specific guidelines defined by those agencies.

The needs based programs (AFDC, Food Stamps and Medicaid) recognize that all States currently have systems for acquiring information and exchanging it among programs. This exchange need not be automated and, in States where a single caseworker is verifying the eligibility of an individual or household for more than one program, the exchange occurs only in the sense that the caseworker uses all available information in determing eligibility.

The needs based programs also recognize that many States regularly

use, in the management of benefit programs, information not encompassed by DEFRA, including States motor vehicle and vital statistics records. While these regulations do not address the extent to which States should integrate State information sources and SIEVS, we believe that State should explore ways of consolidating currently utilized information sources for presentation to eligibility workers. Moreover, an increasing number of States provide income and eligibility information to the caseworker with a speed and frequency not required in this current proposed rule, through techniques such as on-line access to State wage and unemployment compensation files. The needs based programs have not mandated such techniques because we wish to give States the flexibility to design the most effective systems to meet their needs. The needs based programs believe that States need to make use of the most cost efficient techniques available.

The needs based programs believe that Congress intended that States develop such coordinated and responsive systems and that the Federal government is obligated to assist them in this activity. At the direction of the President's Council on Managment Improvement (PCMI), officials representing the programs covered by this legislation are working together to develop further guidelines for States to use in designing and enhancing their systems to improve the responsiveness of Federal data sources to State needs. The guidelines are expected to include a General System Design document for a SIEVS. We plan to test the use of these systems guidelines including methods of prioritizing and tracking case actions in a number of States. We do not anticipate further regulatory action in this regard.

The needs based programs have prescribed in the proposed rule those SIEVS requirements specified in the law. Although the law itself is silent on which benefit program or programs should house eligiblity and income data, the Conference Committee Report suggests that it is Congress' intent that States attempt to minimize the duplication of data exchanges. The Conference Report requires that, with respect to unearned income data from IRS, a single State agency should provide the point of access.

The needs based programs expect that States will take all cost effective steps to minimize or eliminate redundancy in accessing information and exchanging it among programs.

Costs for systems development and operations to support receiver agency SIEVS requirements will be allocated by program under an approved cost allocation plan and will be reimbursed at each program's appropriate Federal matching rate. Agencies must seek prior approval according to Federal guidelines and regulations. Guidelines will be published which will identify how other income and eligibility functions are to be incorporated into an existing or planned Management Information System (MIS).

The Department of Labor's regulations place requirements on the State agencies which administer the State Unemployment Compensation (UC) laws. The substance of and approach to these regulations are necessarily different from the other Departments' regulations. Unlike the other programs, UC is not needs-based. This difference also reflects the nature of the UC agencies' participation in the SIEVS and is due to the fact that under Federal law, the State agencies have wide latitude for determining eligibility and benefit amounts in accordance with State Unemployment Compensation Laws. Since these State agencies are primarily sources of information to other participating agencies, the Department of Labor's regulations focus on Unemployment Compensation agency requirements for providing and safeguarding information.

Other major new requirements of DEFRA are:

—As a condition of eligiblity for the participating programs, each applicant and recipient must furnish his or her social security number(s). States must use the SSN(s) to associate the individual's records. These are new requirements for Medicaid and adult assistance programs administered under Titles I, X, XIV and XVI (AABD);

—Effective September 30, 1988, employers must make quarterly wage reports to a State agency unless the State has an alternative system that is as effective and timely. Currently, eight States do not have quarterly wage reporting by employers.

—Adequate safeguards must be in effect to ensure that: (1) Data exchanged by the State agencies are made available only to the extent necessary to assist in the administrative needs of the program receiving the information, and (2) IRS data are exchanged only with agencies authorized to receive information and (3) The data are adequately protected against unauthorized disclosure for other purposes;

—SIEVS program data will be available to SSI, OASDI and Child Support Enforcement Programs;

—The data are to be used in ways most likely to be productive in identifying and preventing ineligibility and incorrect payments;

—All applicants and recipients must be notified at the time of application, and periodically thereafter, that data available through the system will be obtained and used; and,

—Accounting systems must be used to assure that programs providing data receive appropriate reimbursement from the programs obtaining and using the data.

In addition to issuing these regulations, Federal agencies are taking a number of steps to implement the new DEFRA requirements:

—The Social Security Administration will issue instructions on accessing its files through the Program Operations Manual System (POMS);

—In the SSI program, SSA will begin using IRS unearned income data to determine eligibility and benefit amount in 1985;

—The Internal Revenue Service will publish a *Revenue Procedure* which will give detailed instructions on application for inclusion in the program, input and output specifications for tape files, limitations on the data, and agreements covering reimbursable services. An existing IRS publication, *Tax Information Security Guidelines for Federal, State and Local Agencies*, describes in detail procedures agencies must follow to fulfill the requirement that IRS data will be adequately protected against unauthorized disclosure. Copies of this guideline are available from IRS; and

—The DHHS Office of Child Support Enforcement will issue instructions to implement the new requirements through a "Dear Colleague Letter."

B. Statewide Income and Eligibility Verification System (SIEVS)

1. Access and Use of Source Information

(a) *State Wage Information Collection Agency (SWICA).* (1) In regard to State wage data DEFRA requires that by September 30, 1988, employers in all States make quarterly reports. Employers may make quarterly wage reports to the State UC agency or another agency. The requirement for quarterly reporting may be waived if the Secretary of Labor in consultation with the Secretary of Health and Human Services and Secretary of Agriculture

determines that a State has an alternative system which is as effective and timely for providing employment related income and eligibility data for purposes of verifying eligibility and benefits. As a consequence of this legislation all States are now required to have and use wage data from employers in their particular States.

The Federal agencies, except DOL, have agreed on common criteria for SWICAs which are not UC agencies. The rules would require that such SWICAs would collect the social security number (SSN), full name (last name; first name and middle initial), quarterly wages and employer's name address and identifier. All these items are already available from UC agencies in wage report States except in some States the wage earner's full name is not available. We would require collection of the full name to facilitate wage matching. In addition to requiring it for SWICAs which are not UC agencies, we urge that newly established SWICAs which are UC agencies maintain the full name with the wage and other information. In addition, we encourage State agencies to work with UC agencies to improve established State wage data to include the full name of wage earners.

In addition, the rules propose several criteria for approval of SWICAs which are not UC agencies; these criteria are currently met by UC agencies.

First, employers would be required to report to the SWICA within 30 days of the end of the quarter covered by this report. Second, a SWICA which is not a UC agency would be required to collect wage information from those employers covered by the State's UC law. Such employers are defined in sections 3306 and 3309(a)(1) of the Internal Revenue Code. The SWICA would be expected to consult with State UC officials in developing specifications for which employers would be required to report to the SWICA.

The SWICA would be be required to accumulate earnings by calendar quarter. The rules would also require that the SWICA maintain wage information in a machine readable format so that accurate information can be obtained promptly. Finally, the rules would require that the information in a SWICA must be accessible to other State agencies for interstate wage matching. Wage information maintained by UC agencies currently must be accessible for interstate matching, and we believe that this should be a standard for all SWICAs.

(2) All programs, exept UC, participating in SIEVS would obtain and use wage information from SWICAs as part of the process of determining the eligibility of applicants. SSA will access wage information for the programs it administers to the extent it is cost effective and administratively feasible.

(b) *Internal Revenue Service (IRS).* (1) Unearned income (interest, dividend and other unearned income information), as described in the *IRS Revenue Procedure*, will be available to those programs required to participate in the SIEVS and to the SSI program. The data will be derived from the IRS 1099 form submitted by financial institutions and constitutes an important source of independent information. Institutions submit 1099 forms annually to IRS where they are input to a file which is usually complete by early fall following the end of the tax year. States will be required to submit to IRS a file containing identifying information on applicants and recipients of affected programs. IRS will match these files with its 1099 file and provide the matched information to the States. If a State wishes to secure the most recent data it should make its annual submission to IRS shortly after the IRS file is complete. IRS expects it will take three to five weeks to process requests.

(2) The requirement to access IRS unearned income is a new requirement for all programs, except UC. The AFDC, Medicaid, and Food Stamp Programs will obtain and use unearned income information during the application period from IRS for applicants and for recipients on a yearly basis. The Department of Labor does not plan to require UC agency use of the IRS unearned income information. The SSI program plans to obtain the IRS unearned income on an annual basis.

The technical requirements for obtaining information from IRS will be specified in an IRS *Revenue Procedure* scheduled for publication in March 1985.

(c) *Social Security Administration (SSA).* (1) Wage, income, and other information maintained in Social Security Administration files will be available to those programs required to participate in the SIEVS. That information consists of the following items: Net earnings from self-employment; wages reported either for purposes of OASDI or for purposes of Federal Income Tax; and payment of retirement income from OASDI, from pensions and of related types of retirement income, SSI benefits and payments of railroad retirement.

(2) All programs except UC are required by regulation to obtain SSA data at application in a manner prescribed by the Commissioner of Social Security. The Commissioner will issue guidelines to the States governing access to SSA data. There guidelines will be distributed to State agencies prior to the effective date of these rules. States will have access to SSA information in several ways:

—Through the Beneficiary and Earnings Data Exchange (BENDEX) System. We expect agencies participating in SIEVS to use BENDEX routinely for initial and on-going receipt of information from SSA;

—Through the State Data Exchange (SDX). We except State SIEVS to make SDX data available to particpating agencies; and,

—Through the Third Party Query (TPQY) system. We expect States to use TPQY only in cases where sensitive, time critical conditions are evident.

(d) *Exchange of Information Among the Federally Assisted Benefit Programs Required to Participate in the SIEVS.* (1) Income and eligibility information is available to all of the programs required to participate in the SIEVS.

(2) All programs in the SIEVS will access income and eligibility information from one another in accordance with interstate and intrastate agreements in effect and as appropriate to the requesting program's verification and eligibility factors.

The federal agencies recognize the need to facilitate the exchange of information among States and are exploring options. For example, under consideration is the feasibility of using the existing SESA Internet system or a similar type system.

We request comments and ideas for the interstate exchange of information.

In particular, the AFDC, Medicaid and Food Stamp programs will access Unemployment Compensation (UC) benefits for all applicants in connection with eligibility decisions.

(e) *Access to Alternative Sources.* The sources of income information cited in the law and these regulations are, to our knowledge, unique in the following respects:

The SSA Earnings file is a nationwide file of wages, including those paid by the Federal government, earnings from self employment, and pension benefits. Matches can be routinely conducted and reported twice a month. The file is based on reports by independent sources of information.

The State Wage Information Collection Agency file is a Statewide file, updated quarterly, that includes reports from all private employers.

The IRS Information Return Processing file includes nationwide information on interest, dividends, and

other earned income. Matches can be routinely conducted and reported once a month. The file is based on reports by independent sources of information.

The regulations provide authority for the Departmental Secretaries to approve the use of alternative sources of information if the States can show that the alternative sources are as timely, effective and useful as the source required by law and regulation. At a minimum, alternative sources must meet or equal the capabilities listed above.

We request comments from the State agencies on possible alternative sources of information that are know to exist or potential possible alternative sources contemplated by State agencies. We also request from the States any criteria that they feel might be useful in evaluating alternative sources of information.

(f) *Uses of Information.* For recipients, information received through the State Income and Eligibility Verification System (SIEVS) will be used by the State agency within twenty days of receipt of such information. This information will be used to determine whether the State agency will notify the client of any necessary case action to revise eligibility or benefit amount. During this twenty day period the State agency will be responsible for performing appropriate and necessary verification before taking any adverse case action.

For applicants, information received through the SIEVS will be used by the State agency within 30–45 days of the application date. The State agency is again responsible for performing the appropriate and necessary verification before taking any adverse case action.

2. Procedural Requirements

(a) Furnishing and Verification of SSNs

(1) *Furnishing of SSN.* DEFRA requires that each applicant for and recipient of AFDC, adult assistance, Food Stamps, Medicaid, Unemployment Compensation and other related benefit programs included in the Act, must furnish his or her social security number(s) (SSN) as a condition of eligibility for the appropriate program. Each benefit program must use that SSN(s) as one of the key identifiers in the administration of the program and for the purpose of associating the records pertaining to the applicant and recipient with his or her SSN(s). The AFDC, adult assistance, Food Stamp and Unemployment Compensation programs currently require that all applicants or recipients provide their SSNs as a condition of eligibility. The proposed Medicaid rules implement the new legislation by requiring the furnishing of the SSN by all applicants and recipients and the use of it in the SIEVS.

Each of the involved programs, except UC, currently has a procedure which assists the applicant or recipient in applying for a Social Security number.

(2) *Verification of SSNs.* The proposed rules require State agencies administering AFDC, adult assistance, Food Stamps and Medicaid to verify applicants' SSNs at time of application and recipients's SSNs at the time of their next redetermination or recertification but, in no case later than April 1, 1986. While each applicant and recipient SSN must be verified, there are several different routes an agency can take to accomplish this. First if the client did not have an SSN and the agency assisted that client in applying for one the number received can be considered to be a verified number.

Second, if an agency submits client identifying data through BENDEX or against a received through SDX and the submitted data matches SSA data, then these sources will provide verification of the client's number.

Finally, if neither of the above methods produces a verified number, or in cases where large files must be verified, then the agency may verify the client's number through the Social Security Administration Enumeration Verification (EVS) system

In the event that verification cannot be accomplished because of discrepancies existing between SSA records and the information provided by the State agency, the State agency must be prepared to make every effort to provide additional identifying information to SSA.

The Commissioner of Social Security will publish detailed verification instructions for State use before the effective date of this provisions.

In no case will an agency deny benefits to a client duing the process of verifying an SSN. If an SSN cannot be verified after diligent efforts have failed, States may take action to terminate benefits followng regular fue process procedures.

The Unemployment Compensation program does not propose to require the verification of SSNs in the proposed rules. However, the Department of Labor suggests to the respective State UC agencies that verification may be an effective procedure in reducing the number of ineligibles or fraudulent claims.

(b) Standardized Formats and Procedures

The legislation requires that program participating in the SIEVS must adhere to standardized formats and procedures established by the Secretary of Health and Human Services in consultation with the Secretaries of Agriculture and Labor for purposes of exchanging information with each other and for providing information to administrators of the Child Support Enforcement, OASDI and SSN Programs.

Under the aegis of the President's Council on Intergrity and Efficiency (PCIE) a work group comprised of representatives from State and Federal agencies developed Standardized Computer Matching Formats in four areas: assistance programs, wage and earnings, Unemployment Compensation and medical payments. The provisions in DEFRA pertaining to use of standardized procedures for puposes of exhanging data is a direct outgrowth of this initiative.

The Health and Human Services/ Office of the Inspector General is currently field testing the formats. The test began in October 1983 and will be completed in April 1985. Test results will be evaluated and a final set of formats and guidelines for using them will be developed.

(c) Reports

The proposed rules require that each of the State agencies, except UC, participating in the SIEVS must provide reports, as prescribed by the respective departments. These reports will contain information that can be used to determine the State agencies' compliance with the regulations and provide for evaluation of the effectiveness of the States' Income and Eligibility Verification System (SIEVS). At a minimum the reports will include the number of applicants and recipients subjected to matching procedures, the number of matches that result, the outcome of verification, the number of follow up actions taken and the number of case benefit modifications.

The following types of information would be considered in developing the Departmental reporting requirements:

—Data file matched against (e.g., SWICA wages, IRS unearned income or the SSA wage and benefit file)
—Time period covered by the match
—Date match initiated
—Date raw match results received
—Number of records submitted
—Time period covered by the match
—Number of cases terminated due to the match

—Dollar value of all erroneous payments detected due to the match
—Number of cases where benefits were increased due to the match
—Number of fraud referrals made due to the match.

(d) Safeguards

The statute and the proposed regulations would rigorously protect the confidential and sensitive nature of the information exchanged about individuals. The statute specifically requires that adequate safeguards be in effect to assure (1) that information is made available only to the extent necessary to assist in the valid administrative needs of the agency receiving the information and that the unearned income data from IRS is exchanged only with those agencies authorized to receive it; and, (2) that the information is adequately protected against unauthorized disclosure.

Current program regulations on disclosure, except in UC, specify the uses for which a State agency may release data and the types of data to be safeguarded and require the State agencies at publicize safeguard requirements. The proposed rules would modify current rules, and add rules for UC, as necessary to include information obtained under DEFRA. The proposed rules would standardize requirements and procedures for safeguarding information through agreements between providing and receiving agencies.

(e) Notice to Applicants and Recipients

DEFRA requires the agencies to notify applicants at application and periodically thereafter that information about them will be exchanged and used to verify income and eligibility. Periodically is defined in the individual program regulations. All the proposed rules require the agencies to notify applicants in writing at application but not necessarily on the application form.

(f) Reimbursement for Cost of Providing Data

The Act requires accounting systems to be utilized that assure that programs providing data receive reasonable reimbursement from the agency receiving the data. The rule would require that all agreements for the exchange of income and eligibility information must include provision for determining appropriate reimbursement from the requesting agency for the reasonable cost incurred in providing the data.

We would expect all State agencies to coordinate with each other to make single requests for data and to share the information obtained and the cost of obtaining it.

(g) Independent Verification of Information Prior to Taking Adverse Action.

DEFRA requires independent verification of unearned income information released by the Department of Treasury before terminating, denying, suspending or reducing any benefits. All the proposed rules (except for DOL because Unemployment Compensation agencies will not obtain unearned income information) require independent verification of IRS data, and were essentially guided by the House Conference Report language. The agencies would verify the information relating to:

—The amount of the resource and income involved;
—Whether the applicant/recipient actually has (or had) access to the resource or income or both for his or her own use; and,
—The period or periods when the individual actually had the resource of income; or both,

by either providing the applicant/recipient with an opportunity to verify or rebut the information or by direct contact with the provider of the income or holder of the asset.

As provided under current program rules the applicant/recipient would be (1) notified of any adverse action based on the independently verified unearned income and (2) be given an opportunity for a fair hearing.

Although Congress did not indicate that the State agencies must independently verify all information, we expect that all agencies will continue to conduct all appropriate and necessary verification of information it receives.

(h) Agreements

Current rules concerning wage matching require that, prior to accessing wage information from SSA and/or UC agencies, AFDC and Food Stamp agencies must execute agreements. These agreements must detail the procedures for requesting and providing wage information. These proposed rules would extend these requirements to adult assistance, State Medicaid and UC programs and add the requirement that State agencies execute agreements with IRS. The rules would require that any State agency that directly obtains information from a source agency must have a written agreement with that agency.

C. Delay of Effective Date

The law provides that the Secretary of each Department may grant a delay in the effective date, April 1, 1985, but not beyond September 30, 1986 if the State agency submits a plan describing a good faith effort to come into compliance with the requirements of Section 1137 of the Act. Federal agencies will coordinate review of such plans.

The Secretaries may not waive the effective date of the provisions concerning procedures for protecting individuals with respect to the use of unearned income information from IRS.

D. Requirement for Quarterly Wage Reporting by Employers

The Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision that employers in a State are required to make quarterly wage reports to a State agency if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in section 1137 of the Social Security Act. Criteria for such waiver and the data required from States for receiving such waiver will be issued, if necessary, by the Department of Labor and published for comment in the Federal Register.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

Federal-State Unemployment Compensation Program; Income and Eligibility Verification System

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, Room 7112, Patrick Henry Building, 601 D Street NW., Washington D.C. 20213.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, 601 D Street NW., Room 7112, Washington, D.C. 20213. Telephone: 202-376-6636. Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) is proposing to issue regulations to provide for the participation of the State employment security agencies in an income and eligibility verification system. The Deficit Reduction Act of 1984 amended the Social Security Act to require income and eligibility verification exchange among State and local

agencies administering various federally-assisted programs including the Federal-State unemployment compensation program. Under prescribed conditions, wage, income and benefit information on individuals will be exchanged among the agencies administering the identified programs. The disclosure and exchange of information is limited to program purposes and must be safeguarded against unauthorized disclosure

Section 2651, the Deficit Reduction Act of 1984 (Pub. L. 98-369), amended title XI of the Social Security Act by adding a section 1137 which establishes an income and eligibility verification system for the exchange of information among State agencies administering specified programs. The programs are: aid to families with dependent children (AFDC), Medicaid, Food Stamps, supplemental security income (SSI), unemployment compensation (UC) and any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act. Programs participating in the income and eligibility verification system are required to share information to assist in the child support program and to assist the Secretary of Health and Human Services in verifying eligibility amounts under titles II and XVI of the Social Security Act.

Section 2651 of the Deficit Reduction Act of 1984 also amended section 303 of title III of the Social Security Act to require the State agency charged with administering the unemployment compensation law to participate in the income and eligibility verification system. Secton 303 has previously required only that State unemployment compensation agencies disclose certain specified information to Federal and State Food Stamp agencies, and State and local child support agencies.

Under the new verification system, employers will be required to make quarterly wage reports to a State agency (which may be the State unemployment compensation agency) except that the requirement may be waived if an alternate system for providing employment-related income and eligibility data is approved by the Secretary of Labor (in consultation with the Secretaries of Health and Human Services and Agriculture). The wage data will be available for all of the participating programs under the income and eligibility verification system. All agencies will also have access to information on income and earnings of individuals from the Social Security Administration and unearned income from the Internal Revenue Service.

The Employment and Training Administration's regulations do not contain specific requirements as to the extent to which information must be utilized in verifying eligibility and benefit amounts. Eligibility and benefit amounts are determined under State, rather than Federal, unemployment compensation laws. The State unemployment compensation agencies already employ a variety of techniques to verify eligibility prior to the first payment of a claim, during the claim series and as a post-audit. These States agencies, with the direct responsibility for administering the State unemployment compensation law, have considerable latitude under Federal law in determining the usefulness and effectiveness of various sources of information.

The Employment and Training Administration continues to work with State unemployment compensation agencies on improved methods for ensuring correct and timely payments of benefits. For example, a State-Federal work group has developed pilot procedures for verifying eligibility prior to the first unemployment compensation payment. These procedures will be tested in several States. To the extent these procedures prove effective, the Department of Labor will issue them as technical assistance guides for State use consistent with State unemployment compensation laws.

The Employment and Training Administration is also developing a quality control (QC) program for use by State agencies. The objective of QC is to enable State agencies to assess the causes of inappropriate payments and to take corrective action by providing sufficient and timely data. The Employment and Training Administration also plans to issue further guidance, as appropriate, with respect to utilizing the sources of information identified in these regulations.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213; telephone (202) 376-6636 (this is not a toll free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulation, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) and would not be effective until OMB has approved them.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an income and eligibility verification system and has no economic impact on any small entities. The Under Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 603

Unemployment compensation, Labor.

Words of Issuance

For the reasons set forth in the preamble, it is proposed that a new Part 603 be added to Chapter V of Title 20 of the Code of Federal Regulations as set out below.

Signed at Washington, D.C. on February 25, 1985.

Ford B. Ford,

Under Secretary of Labor.

It is proposed to add a new Part 603 to Chapter V of Title 20 of the Code of Federal Regulations to read:

PART 603—INCOME AND ELIGIBILITY VERIFICATION SYSTEM

Sec.

603.1 Purpose.

Subpart A—Income and Eligibility Verification System

603.2 Definitions.
603.3 Eligibility condition for claimants.
603.4 Notification to claimants.
603.5 Disclosure of information.
603.6 Agreement between State unemployment compensation agency and requesting agency.
603.7 Protection of confidentiality.

603.8 Obtaining information from other agencies and crossmatching with wage information.
603.9 Effective date of rule.

Subpart B—Quarterly wage reporting

603.20 Effective date of rule.
603.21 Alternative system.

Authority: Sec. 1102, Social Security Act, ch. 531, 49 Stat. 647, as amended (42 U.S.C. 1302); Reorg. Plan No. 2 of 1949, 63 Stat. 1065, 14 FR 5225.

§ 603.1 Purpose.

(a) Section 2651 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) amended title XI of the Social Security Act to include a requirement that States have an income and eligibility verification system in effect which would be used in verifying eligibility for, and the amount of, benefits available under several Federally assisted programs including the Federal-State unemployment compensation program. The Act requires that employers in each State make quarterly wage reports to a State agency, which may be the State unemployment compensation agency, and that wage information and benefit information obtained from other agencies be used in verifying eligibility for benefits. The requirement of quarterly wage reporting may be waived if the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) determines the State has in effect an alternative system which is as effective and timely as quarterly wage reporting for the purposes of providing employment related income and eligibility data.

(b) Section 2651(d) of Pub. L. 98–369 added a new section 303(f) of the Social Security Act (42 U.S.C. 503(f)), to provide that the agency charged with the administration of the State unemployment compensation law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act, as added by Pub. L. 98–369. The regulations in this part are issued to implement this requirement.

Subpart A—Income and Eligibility Verification System

§603.2 Definitions.

For the purposes of this Part:

(a) "State unemployment compensation agency" means the agency charged with the administration of the unemployment compensation law approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954 (26 U.S.C. 3304).

(b) "Wage information" means information about wages as defined in the State's unemployment compensation law and includes the Social Security Account Number (or numbers, if more than one) and quarterly wages of an employee, and the name, address, State, and (when known) Federal employer identification number of an employer reporting wages under a State unemployment compensation law, except that in a State in which wages are not required to be reported under the unemployment compensation law, "wage information" means:

(1) That wage information which is reported under provisions of State law which fulfill the requirements of section 1137 of the Social Security Act; or

(2) That information which is obtained through an alternative system which fulfills the requirements of section 1137 of the Social Security Act.

(c) "Claim information" means information regarding:

(1) Whether an individual is receiving, has received or has applied for unemployment compensation;

(2) The amount of compensation the individual is receiving or is entitled to receive;

(3) The individual's current (or most recent) home address; and

(4) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.

(5) Any other information contained in the records of the state unemployment compensation agency which the requesting agency determines is useful in verifying eligibility for, and the amount of, benefits.

(d) "Requesting agency" means:

(1) Any State or local agency charged with the responsbility of enforcing the provisions of the Aid to Families with Dependent Children program under a State plan approved under part A of title IV of the Social Security Act;

(2) Any State or local agency charged with the responsbility of enforcing the provisions of the Medicaid program under a State plan approved under title XIX of the Social Security Act;

(3) Any State or local agency charged with the responsiblilty of enforcing the provisions of the Food Stamp program under the Food Stamp Act of 1977;

(4) Any State or local agency charged with the responsibility of enforcing a program under a plan approved under title I, X, XIV, or XVI of the Social Security Act;

(5) Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under part D of title IV of the Social Security Act; and

(6) The Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under titles II and XVI of the Social Security Act (Section 1137(a)).

§ 603.3 Eligibility condition for claimants.

(a) The State unemployment compensation agency shall require, as a condition of eligibility for unemployment benefits, that each claimant for benefits furnish to the agency his/her social security account number (or numbers if he/she has more than one such number), and the agency shall utilize such account numbers in the administration of the unemployment compensation program so as to associate the agency's records pertaining to each claimant with the claimant's social security number(s).

(b) If the State agency determines that a claimant has refused or failed to provide a Social Security Account Number, then that individual shall be ineligible to participate in the unemployment compensation program.

(c) Any claimant held ineligible for not supplying a social security account number may become eligible upon providing the State agency with such number retroactive to the date of filing an initial claim (Sec. 1137(a)(1)).

§ 603.4 Notification to claimants.

Claimants shall be notified at the time of filing an initial claim for benefits through a written statement on or provided with the initial claim form and periodically thereafter that information available through the income and eligibility verification system will be requested and utilized by requesting agencies as defined in § 603.2(d) Section 1137(a)(6)).

§ 603.5 Disclosure of information.

The State unemployment compensation agency will disclose to authorized requesting agencies, as defined in § 603.2(d), which have entered into an agreement in accordance with this part, wage and claim informaton as defined herein contained in the records of such State agency as is deemed by the requesting agency to be useful in verifying eligibility for, and the amount of, benefits. Standardized formats established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) will be adhered to by the State unemployment compensation agency; such standardized formats for State unemployment compensation

agencies will be issued by the United States Department of Labor and published in the Federal Register for comment (Sec. 1137(a)(4)).

§ 603.6 Agreement between State unemployment compensation agency and requesting agency.

(a) The State unemployment compensation agency will enter into specific written agreements with any requesting agency as defined in this Part.

(b) The agreements will include, but need not be limited, to the following:

(1) The purposes for which requests will be made and the specific information needed;

(2) Identification of all agency officials, by position, with authority to request information;

(3) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested information;

(4) Basis for establishing the reporting periods for which information will be provided;

(5) Provisions for determining appropriate reimbursement from the requesting agency for the costs incured in providing data, including any new developmental costs associated with furnishing data to the requesting agency and calculated in accordance with the provisions of OMB Circular A–87;

(6) Safeguards to ensure that information obtained from the State unemployment compensation agency will be protected against unauthorized access or disclosure. At a minimum, such procedures will comply with the requirements of § 603.7.

(c) The requirements in paragraph (a) and (b) of this section shall also apply to requesting agencies receiving information from a State unemployment compensation agency in another State and shall be administered by the State unemployment compensation agency disclosing the information section 1137(4) and (a)(7)).

§ 603.7 Protection of confidentiality.

(a) State unemployment compensation agencies shall require requesting agencies receiving information under this Part to comply with the following measures to protect the confidentiality of the information against unauthorized access or disclosure:

(1) The information shall be used only to the extent necesary to assist in the valid administrative needs to the program receiving such information and shall be disclosed only for these purposes as defined in this agreement;

(2) The requesting agency shall not use the information for any purposes not specifically authorized under an agreement that meets the requirements of § 603.6;

(3) The information shall be stored in a place physically secure from access by unauthorized persons;

(4) Information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal or other means;

(5) Precautions shall be taken to ensure that only authorized personnel are given access to on-line files;

(6) (i) The requesting agency shall instruct all personnel with access to the information regarding the confidential nature of the information, the requirements of this Part, and the sanctions specified in State unemployment compensation laws against unauthorized disclosure of information covered by this part, and any other relevant State statutes, and

(ii) Each individual shall sign a written acknowledgment of these instructions including an affirmation of the individual's willingness to abide by the requirements.

(b) Any requesting agency is authorized to redisclose the information only as follows:

(1) Any wage or claim information may be given to the individual who is the subject of the information;

(2) Information about an individual may be given to an attorney or other duly authorized agent representing the individual if the information is needed in connection with a claim for benefits against the requesting agency; and

(3) Any wage or claim information may be given to another requesting agency as defined in this Part or to any criminal or civil prosecuting authorities acting for or on behalf of the requesting agency if provision for such redisclosure is contained in the agreement between the requesting agency and the State unemployment compensation agency.

(c) The requesting agency shall permit the State unemployment compensation agency and the United States Department of Labor (and other authorized Federal officials) to make onsite inspections to ensure that the requirements of State unemployment compensation laws and Federal statutes and regulations are being met (section 1137(a)(5)(B)).

§ 603.8 Obtaining information from other agencies and crossmatching with wage information.

(a) The State unemployment compensation agency shall obtain such information from the Social Security Administration and any requesting agency as may be useful in verifying eligibility for, and the amount of, benefits.

(b) To the extent that such information shall be determined likely to be productive in identifying ineligibility for benefits and preventing incorrect payments, the State unemployment compensation agency shall crossmatch quarterly wage information with unemployment benefit payment information (section 1137(a)(2)).

(c) To the extent necessary, the United States Department of Labor may amplify on the requirements for State compliance with this section in instructions issued and published for comment in the Federal Register under the provisions of section 1137(a)(2) of the Social Security Act.

§ 603.9 Effective date of rule.

The effective date of this Subpart A rule is April 1, 1985, except that the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, may by waiver grant a delay in this effective date if the State submits within 90 days of publication of this rule in final form a plan describing a good faith effort to comply with the requirements of section 1137(a) and (b) of the Social Security Act through but not beyond September 30, 1986.

Subpart B—Quarterly Wage Reporting

§ 603.20 Effective date of the rule.

The requirement that employers in a State report quarterly wage information to a State agency (which may be the State unemployment compensation agency), if effective September 30, 1988 (section 1137(a)(3)).

§ 603.21 Alternative system.

The Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision that employers in a State are required to make quarterly wage reports to a State agency if the Secretary determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in section 1137 of the Social Security Act. Criteria for such waiver and the date for submitting requests for such waiver will be issued, if necessary, by the United States Department of Labor and published for comment in the Federal Register.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 275

[Amdt. No. 264]

Food Stamp Program; Deficit Reduction Act

ADDRESS: Comments should be submitted to Bonny O'Neil, Director, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 711.

SUPPLEMENTARY INFORMATION: This rule would amend the Food Stamp Program regulations published October 17, 1978 (43 FR 47846), as amended, which implemented the Food Stamp Act of 1977, as amended. It would implement recent legislation by providing requirements for State income and eligibility verification systems. In so amending Food Stamp Program regulations, the rule would help ensure that benefits are issued only to eligible households and in correct amounts.

Classification

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

This proposed program activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

This proposed rule has also been reviewed with regard to the requirements of Pub. L. 96–354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. This rule would change Federal regulations to comply with Pub. L. 98–369 by requiring State agencies to implement a system for verifying income and eligibility and would set standards for certain State agency actions. State agencies would be affected in varying degrees by the need to develop new administrative procedures. Households would be affected to the extent that information obtained from the verification system and standards for follow-up action increase State agency effectiveness in identifying and taking appropriate action on households which are ineligible or are receiving excess benefits.

Justification for 45-day Comment Period

Legislation specifies an April 1, 1985 effective date for these provisions, subject to good faith compliance waivers until September 30, 1986. Thus, in order to have final rules in place as close to the April 1985 deadline as possible, some modification of routine Department procedure is required. Although these proposed rules will require some new State agency activities, many State agencies currently conduct variations of these activities. As the requirements are not completely new, the Department does not believe participation in this rulemaking by States or other interested parties will be significantly affected by a 45-day rather than a 60-day comment period.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) and would not be effective until OMB has approved them.

Background

As discussed in the general preamble, the Deficit Reduction Act of 1984 (Pub. L. 98–369, s2651) requires that State agencies implement systems to request and exchange information with certain agencies and other programs. Such requests and exchanges are to be made to the extent that the information may be useful in verifying eligibility and benefit amounts. This statute retains current wage matching requirements within a broader system of third party information. The broader system, the State Income and Eligibility Verification System (SIEVS), involves wage and other information provided by the several agencies identified in the general preamble: State wage information collection agencies (SWICAs), the Social Security Administration (SSA), and the Internal Revenue Service (IRS). Programs required to exchange information are: the Food Stamp Program (FSP); Aid to Families with Dependent Children (AFDC); Unemployment Compensation (UC); Medicaid; and State administered adult programs in Puerto Rico, Guam and the Virgin Islands. Information about such household circumstances as wages, unearned income and benefits can be extremely useful to State agencies administering the Food Stamp Program by periodically providing reliable information independent of household reports. This rule proposes requirements designed to assure that State agencies avail themselves of that information and use it. As mentioned in the general preamble, the rule recognizes the need for differently structured verification systems State-to-State by allowing State agencies to work out procedures which, within the constraints of their resources, will best achieve the objectivers of the SIEVES and help assure the accurate issuance of food stamp benefits. (See 7 CFR 272.8(a).)

Information Sources

The general preamble discusses the legislative requirements and the details of the proposed regulatory provisions for SWICAs, which are common to all the information-sharing programs using SIEVS. The SWICA is the State UC agency or other agency through which quarterly wage date from State employers are made available to the SIEVS. The rules would require State agencies to obtain and use SWICA data for applicant households and quarterly for recipients.

Current Food Stamp Program rules require State agencies to request wage information from the Social Security Administration (SSA) unless they are wage report States, in which case they must use wage and other income information from UC agencies. Under the new law, all State agencies must request and use wage and benefit information that is available pursuant to section 6103(1)(7) of the Internal Revenue Code from SSA. As described in the general preamble, that information comes from Federal income tax returns and, as under current rules,

consists of the following items: net earnings from self employment; wages reported either for purposes of Old Age, Survivors and Disability Insurance (OASDI) or for purposes of Federal income tax; and payments of retirement income from OASDI, from pensions and of related types of retirement income, and payments of railroad retirement. These rules would require that State agencies obtain and use SSA data for applicants and use updated SSA data for recipients as it is provided.

As discussed in the general preamble, the Deficit Reduction Act requires that the various programs request and use unearned income information from IRS. The Food Stamp rules would require that State agencies make such requests for all applicants and annually for recipients. IRS is requesting that States submit a single monthly request, combining inquiries from all programs.

The proposed food stamp rule would require the use of Unemployment Insurance Benefits (UIB). The rule would require that all State agencies request and use UIB information because UIB is income for food stamp purposes. The legislation specifically requires that in addition to what information they obtain through the verification system from UC agencies, Food Stamp Program State agencies would be required to also request and utilize any additional information available from UC agencies to the extent permitted under section 303(d) of the Social Security Act. The rule would require such information use, although wage data from SWICAs and UC benefit information should in most cases include all information available from UC agencies. (See 7 CFR 272.8(a)).

Child Support and Other Program Information Sharing

As discussed in the general preamble, in addition to the flow of information among AFDC, FSP, Medicaid and UC programs, the law requires that these programs provide information to the Child Support Program and the Old Age, Survivors, and Disability Insurance (OASDI) Program, and the Supplemental Security Income (SSI) program. A recent proposed rulemaking concerning disclosure of information obtained from Food Stamp households (48 FR 16834, dated April 19, 1983) discussed providing access to food stamp casefile information to "means tested" programs. Comments on that proposal indicated belief that access should be provided to the Child Support Program. DEFRA authorizes the Department to allow such access. Food Stamp casefile information, including the addresses of non-supporting absent parents, would be made available to either State level child support enforcement officials or appropriate Federal personnel, such as those associated with the Parent Locator Service. Access would also be provided to OASDI and SSI.

Current food stamp rules require action on information reported to the AFDC program as though it had been reported for food stamp purposes. Therefore, no new exchange of information between Food Stamps and AFDC is required by these rules. However, it is expected that State agencies will take this opportunity to make any needed improvements in the accessibility of AFDC case information for food stamp case actions. Also, the rule would not prescribe information which all State agencies must provide other programs. Other programs participating in SIEVS in a State wanting Food Stamp Program information would be expected to negotiate concerning it, and any arrangements for providing it would be included in agreements governing data exchange which are discussed later in this preamble. (See 7 CFR 272.1(c) and 272.8(e)(4).

Alternate Data Sources

As already mentioned, the new legislation provides that requests for information are to be made to the extent that information is useful for verifying eligibility and benefits. The Department believes that this standard of utility should be included in the rules and therefore would provide for State agencies to apply for alternate data bases. There may be situations in which a State agency has access to a State data base which is as effective and useful as one specified in the rules, or situations in which one data base specified in the legislation can be substituted for another. One example might be the use of a SWICA instead of wage data from SSA. The rule would allow State agencies to apply for approval of such alternate data sources in connection with submittal of the attachment to the Plan of Operation concerning SIEVS, as discussed later in this preamble. The basic requirement for approval of such a source would be that it provides timely and accurate information that is as useful for verifying eligibility and benefit amounts as the other source. Prior to approving the use of any alternate data source, the Department would consult with the Departments of Health and Human Services, and of Labor. (See 7 CFR 272.8(c).)

Agreements, Safeguards, Uses

Current rules concerning wage matching require that, prior to accessing wage information from SSA and/or UC agencies, State agencies must execute agreements with those agencies which detail the procedures for requesting and providing wage information. These proposed rules include these requirements, extend them to include IRS, and add the requirement that the agreements be submitted as part of State agency Plans of Operation. In addition, in accordance with the legislative requirements, the rule would require that the agreements specify reimbursement arrangements, as appropriate. Reimbursement agreements may include new developmental costs provided those costs are necessary for the furnishing of the data to the user agencies. Such costs for example might be for computer software needed to meet the format requirements of the requesters.

As does the current rule, the proposed rule would require that the agreements between State agencies include safeguard provisions which would assure compliance with the requirements of provider agencies. The specific references to Sections 6103(l) and 7213 of the Internal Revenue Code of 1954 and the IRS publication *Tax Information and Security Guidelines* are retained. (State agencies wanting more background information about safeguards should refer to the proposed and final wage match rules at 47 FR 19943, dated May 7, 1982; and 47 FR 50180, dated November 5, 1982.) Current rules require State agencies to use wage match information to verify eligibility and benefits, to investigate the possibility of the issuance of benefits to households not entitled to them, and to substantiate information which will be used in criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled. The proposed rule would apply the current uses of wage match information to information obtained from the SIEVS. (See 7 CFR 272.8(a)(4) and (5).)

Standard Formats

The general preamble discusses standard formats. The proposed food stamp rules would require that request to SWICAs, UC agencies and other States be in formats prescribed by the Secretary, and that requests to SSA and IRS be in formats prescribed by the respective Commissioners. As also mentioned in the general preamble, SSA and IRS are issuing instructions relating to obtaining the information they are authorized to provide. The Department would add that, until they are provided, State agencies would be expected to use

whatever formats best facilitate information requests and usages at the State and local level. (See 7 CFR 272.8(d).)

Automation

This rule does not require an overrall, computerized system, as is pointed out in the general preamble. Nonetheless, since matching is difficult without computer use, State agencies are encouraged to use computers to the maximum extent in developing efficient methods of matching. Lack of computer capacity would not be a reason to excuse project areas from the matching requirements. Study results are available that indicate that a mostly manual system with only minimum computerization support can be cost-effective, if carefully managed.

Independent Verification

Under current rules, third party confirmation of information provided by a food stamp applicant household, other than confirmation under routine use agreements, may only be made with the consent of the household. If a State agency designates a collateral contact, it must notify the household prior to making the contact. Upon notice, the household has three options available to it: 1) Consent to the contact; 2) provide acceptable verificaiton in another form; or 3) withdraw its application. If the household refuses to choose one of these options, its application is denied for failure to provide requested verification. (See 7 CFR 273.2(f)(4)(ii).)

The provisions of the current rules requiring advance notice resulted from the Department's interpretation of section 11(e)(8) of the Food Stamp Act (7 U.S.C. 2020(e)(8)) which limits the disclosure of information obtained from households to persons who administer the Food Stamp Program, persons who administer certain other Federal and State assistance programs, the Comptroller General of the United States, and Federal and State law enforcement officials for specified purposes. The Department's interpretation was based on the view that, absent the applicant's prior consent, section 11(e)(8) would not permit the inadvertent though unavoidable disclosure of an applicant or participant's name when contact was made with a third to verify information provided in the application. (See 47 FR 53313 (1982).) This effort to implement DEFRA has necessitated a closer analysis of Congressional intent regarding the relationship between program integrity and the concern for individual privacy as expressed in the Food Stamp Act and DEFRA.

The Department now believes for the reasons explained below that the current rules interpret section 11(e)(8) of the Act more broadly than in necessary. For this reason, the proposal provides more limited notice requirements which would bring Food Stamp Program policy in line with the current and proposed policy of the other agencies involved in SIEVS and permit a more effective and consistent administration of DEFRA across program lines.

DEFRA requires that prior to taking adverse action based on information about unearned income obtained from the IRS, the State agency must take appropriate steps to independently verify that information. In explaining this requirement, the Conference Committee report states at page 1412 (H.R. REP. NO. 8651, 98th Cong., 2nd Session. 1412 (1982)):

> The agency may use one of two approaches to verify unearned income return information that it has received from IRS. It may contact the financial institution or corporation that submitted the information to the IRS, requesting its cooperation in verifiying the information. If the institution verifies the information, the agency must send the individual notice of denial, reduction, suspension, or termination of benefits (whichever is applicable), including information on the right to appeal the action. If the action is not appealed, the agency may proceed to take the appropriate action, based on the verified information.
>
> Alternatively, the agency may contact the individual directly by letter informing him of the information that it has received, and requesting that the individual respond within a specified period. The conferees expect that the agency's letter to the recipient will be unintimidating in tone, and will clearly explain the information that the agency has, and the possible relevance of the information to the individaul's eligibility for (and amount of) any past or future benefits. If the individual responds by verifying the information, the agency will take the appropriate case action. If the individual indicates that the information is not correct or is incomplete, the agency must obtain evidence (from the individual or institution involved or otherwise) to substantiate any negative case action that it may take. If the individual fails to respond after reasonable efforts to contact him, the agency will take steps to close or deny the case on the basis of the individuals' failure to cooperate.
>
> In all cases involving reduction, suspension, or termination of benefits, the recipient must be sent notice of the action to be taken, including information on the right to appeal and opportunity for a hearing.

While the statement of Congressional intent does not appear to require any notice to applicants when the State agency adopts the first alternative, DEFRA does provide protection of individual privacy interests by requiring that all applicants for and recipients of benefits under programs included in SIEVS be notified at the time of application and periodically thereafter that information available through the system will be requested and utilized. (See Pub. L. 98–369, Sec. 2651, 98 Stat. 1147.) As discussed later in this preamble in connection with Social Security numbers, this proposed rule would require such notice as part of the application process. Because applications are used for recertifications, households would therefore be periodically notified. (See 7 CFR 273.2(b).)

The Department believes that the notice required by DEFRA fully satisfies the purposes of the privacy interest established by section 11(e)(8) of the Food Stamp Act. It comes in advance of any actual contact with employers, banking institutions and the like and provides the applicant the opportunity to elect to forego program benefits rather than permit disclosure to persons not involved in the administration or enforcement of the various benefit programs of the fact that the application has been made. Therefore, this rule would eliminate the requirement that State agencies obtain prior permission from applicants and recipients before contacting third parties for verification. Because the current rules concerning systems of records to which State agencies have routine access (§ 273.2(f)(4)(ii) were necessary because of the rule on prior permission, this rule would also eliminate those rules. (See 7 CFR 273.2(f)(4)(ii).)

As mentioned above, the law requires that information about unearned income obtained from IRS must be independently verified prior to any adverse action being taken. The Department believes that certain other SIEVS information should also be subject to independent verification. This information is wage information from SWICAs and SSA. The Department believes that independent verification is needed in all of these instances because the information indicates a discrepancy but does not itself carry verification of circumstances warranting an adverse action. Accordingly the rule would require independent verification for SIEVS information considered to be unverified. Current rules require such verification. (See 7 CFR 273.2(f)(4)(iv).)

There is some information which would be obtained through SIEVS which can be considered verified upon receipt and so does not require any further inquiry by the State agency prior to initiating an adverse action. This is information about social security and SSI benefits obtained from SSA, and

AFDC benefit and UIB information obtained from agencies administering those programs. The proposed rules would require action on such verified SIEVS information upon its receipt, including proper notices to households and an opportunity for a fair hearing. (See 7 CFR 273.2(f)(9).)

In addition, the rule would modify current rules on contacting households to resolve discrepancies between information they have provided and information obtained from a third party. The rule would permit, in conformance with the expanded collateral contact authority, resolution either with the household or through third party verification. A specific reference to SIEVS information is included. (See 7 CFR 273.2(f)(4)(iv).)

Timeframes for Obtaining and Using Information

State agencies generally would be required to obtain and use information from SIEVS within the 30-day application period for applicant households and within 20 days of its receipt for recipient households. Obtaining and using SIEVS information within the application period would entail a prompt request to the various provider agencies, prompt return of information or a signal that there is none on file, a determination of whether a discrepancy is indicated and any necessary resolution of it with the household, as is currently required. State agencies are encouraged to develop as fast an exchange environment as possible to meet this timeframe. The rule would provide that if the information has not been obtained by the time the State agency is otherwise able to make an eligibility decision, that decision should not be delayed. In those situations, when the information is received, it would be used under the provisions pertaining to recipient households discussed just below. State agencies would continue in all cases to comply with the 30-day standard for providing an opportunity to participate, as specified in current rules and as required by the Food Stamp Act.

Obtaining and using SIEVS information on recipient households within 20 days of its receipt would entail three actions. First State agencies would review the information and, by means of priorities described later in this preamble as part of the Plan of Operation, identify which information indicates a discrepancy warranting case record review. Second, State agencies would review case records and contact households and/or collateral contacts to resolve the discrepancies. Third, State agencies would be required to send notices of adverse action if warranted. State agencies would then take action according to current rules on reductions, etc., and claim determinations.

The Department believes that the more automated the procedures for requesting, obtaining and reviewing SIEVS data, the easier compliance with the above timeframes will be. We recognize that some State agencies may already have this capacity in whole or part. We are particularly interested in the feasibility of the proposed timeframes and documentation showing State agency experience with this facet of matching activities. (See 7 CFR 272.8 (e) and (f).)

Obtaining and Using Information From Sources

The timeframes and actions just described would apply to SWICA information for applicants using the most recent SWICA wage data available. Recipient households would be matched at quarterly intervals, and include all households which participated in any month of the quarter covered by the wage data.

The timeframes and actions would also apply to SSA information for applicants and recipient households. If State agencies use BENDEX to request SSA data for an applicant, no further match would be required because once an individual is entered into BENDEX, the State agency will automatically receive any new information on entered households. If the Third Party Query (TPQY) system is used, State agencies would need to input the applicant's information into BENDEX. The Commissioner of SSA will be publishing instructions on how to access SSA data. The 20-day timeframe would apply to information received from SSA as an update to an earlier request on the BENDEX file. State agencies are expected to promptly put applicants on BENDEX if the TPQY is used at application.

As already mentioned, in addition to obtaining and using IRS information for applicants, the rules would require that it be obtained and used annually for recipient households, and the 30-day and 20-day timeframes would apply.

AFDC and Food Stamp Program matching regulations in regard to requests for UIB information have been made as uniform as possible. Information would be obtained and used for applicants during the 30-day application period and for each of the three subsequent months or until UIB receipt is shown, whichever is earlier. The purpose of the requirement for requests for those subsequent months, if the result of the initial request is negative, is to discover the receipt of UIB after application but which the household has not reported. The rule would also require a UIB match whenever a household loses a job and a continuance of monthly inquiries to UIB after a household has been identified as having UIB benefits. The reasons for these latter two requirements are that households losing a job may be eligible for and receive UIB shortly thereafter, and that the amount of UIB benefit may change from month to month, particularly if a household is employed part-time while receiving UIB benefits.

Our most current information indicates that earned income exists in 17.6 percent of Food Stamp Program households while receipt of UIB benefits exists in only 1.6 percent. Earned income in those households averages $450 per month while UIB averages $416. Our quality control data indicate that unreported earnings constitute the largest dollar source of all QC errors. It is anticipated that unreported UIB may also constitute an error source commensurate with its frequency of receipt by food stamp households. Even though a smaller percentage of households receive UIB benefits, it has been noted that UIB matches are easier to perform since the UIB data, once accessed, does not need independent verification. The Department would appreciate comments on this proposed rule provision with respect to the advantages and disadvantages of this consistency of policy between AFDC and the Food Stamp Program relative to cost considerations.

To provide for any differences between information available from different State UC agencies, the rule would require that if a UC agency has information in addition to what these rules would require, that State agencies obtain it if that information would be useful in verifying eligiblity and benefits. State agencies would be required to request this information periodically according to agreements with their respective UC agencies. As distinct from other requests for and exchanges of information, the legislation does not require that requests for additional information from UC agencies be made through the SIEVS. Nonetheless, to assure that State agencies develop adequate procedures for complying with this requirement, the rule would require that State agencies include procedures for requesting this information in their Plans of Operation pertaining to the SIEVS unless they present compelling reasons that some other method of obtaining approval would be more efficient.

Social Security Numbers

As discussed in the general preamble, the legislation requires that each applicant or recipient furnish his social security number (SSN) to the State and that the State use that SSN in the administration of the program to associate the records pertaining to the applicant or recipient. Curent food stamp rules already require that all household members provide their SSNs as a condition of eligibility, that they be entered into State agencies' automated data bases, and that they be used to prevent duplicate participation. Furthermore, current rules provide that State agencies may use SSNs to access information about SSI participants from the State Data Exchange (SDX), and encourage State agencies to use SSNs to facilitate mass changes and to determine the accuracy and/or reliability of information given by households. The proposed rule would add the requirement that State agencies use SSNs in requesting and obtaining information through SIEVS.

Because of the importance of correct SSNs in obtaining information through the SIEVS which actually pertains to the household member in question, the rule would require the State agency to submit SSNs to SSA for verification. The current provision allowing verification by observing a social security card or any official document containing the SSN would be deleted. Experience has shown that this method does not adequately determine if a person is using his or her own SSN or detect counterfeit social security cards.

The proposed rule would not necessarily require a special submission to SSA solely to validate the SSN. Rather, validation may be accomplished at the same time requests to SSA are made for social security benefit or wage or other information, or for SSI information on applications. The key input information is name and SSN. If these do not *both* match, the SSA systems would indicate this, and the eligibility workers would need to resolve the discrepancy with the household. If these systems report information for the individual, then the SSN has been validated and does not have to be verified independently. The proposed rule would retain the current provisions that certification cannot be delayed solely to submit the SSN for validation. However, as is the case now, discrepancies in SSNs (such as ones provided by households and ones on wage stubs) which are discovered prior to certification must be resolved before the household can be found eligible. Because of the new procedures for verifying SSNs with SSA, the provision requiring verifcation by the next recertification would be removed. The proposed rule would continue to require that State agencies permanently annotate their files to indicate verified SSNs and accept as verified those SSNs which are verified by similar programs, specifically those participating in the SIEVS. This would avoid the cost of reverifying an SSN after either the State agency or another program has verified it.

Current rules concerning obtaining an SSN specify that if a household member does not have an SSN and the State agency has an enumeration agreement with SSA then the State agency can either require the individual to apply for an SSN through the State agency or can provide the individual a choice between applying through the State agency or through SSA. The proposed rule would require that State agencies with enumeration agreements complete the application for the SSN. Application through the State agency will facilitate determinations of good cause for any delay in application and assure prompt notice to the State agency of the SSN when it is issued. The rule would retain the requirement that State agencies which have an enumeration agreement with SSA for AFDC and Medicaid renegotiate that agreement to offer this service to food stamps applicants and participants. The proposed rule would also retain the requirement that if there is no enumeration agreement, individuals must apply at an SSA office.

Current rules provide that a household member without an SSN shall be allowed to participate for 30 days after the first day of the first full month of participation while awaiting receipt of the SSN. Individuals refusing or failing without good cause to provide an SSN are ineligible. Good cause for failure to privide an SSN is currently based on information from the household, SSA or the State agency. Evidence that the household has applied for an SSN would be grounds for good cause. Such a finding would extend the individual's eligibility for an additional 30 days. After one extension, the household member without an SSN would be ineligible regardless of good cause. FNS has had to grant numerous States waivers to this rule based on documentation that large numbers of applicants are unable to obtain an SSN within the time permitted, through no fault of their own. The proposed rule would modify these requirements. First, once an application has been filed, the State agency would permit the household member to participate pending receipt of the SSN regardless of how long it takes to receive the SSN. This change would eliminate the problems associated with individuals having timely applied for an SSN but not have received it within the 30-day extension period. To help assure prompt inclusion of the individual's SSN in the food stamp case record once it is issued, the rule would require that State agencies arrange with SSA to be directly notified of the SSN when it is issued to the individual. State agencies should check with SSA offices on the exact procedures for this direct notification, but in general they involve providing the applicant a case identification number which the applicant in turn can provide SSA who will then identification number which the applicant in turn can provide SSA who will then use that number to notify the State agency of the SSN. SSNs obtained either by enumeration or by direct notification to the State agency are verified and need not be verified again.

Second, the rule provide that good cause does not include delays due to illness, lack of transportation or temporary absences because SSA provides for mail-in applcations. Third, a showing of good cause for not applying timely will allow the individual to participate for one month in addition to the month of application. For participation to continue, good cause for failure to apply must be determined at the end of each month of participation. As in the current rules, State agencies would be asked to help obtain documentation if that were the problem with submitting the application. These goods cause provisions would also apply to households certified under expedited service. (See 7 CFR 273.2(f)(1)(v) and 273.6.)

Notification of the Use of SSNs

The legislation requires that all applicants for and recipients of benefits under the programs participating in the SIEVS must be notified at the time of application and periodically thereafter that information available through the SIEVS will be requested and used. The proposed rule would implement this notice requirement by a written statement provided on or with the application. Since the application is used at recertification, this procedure would also periodically notify households about the use of SIEVS. Notification language on the application for food stamps will be revised to conform to DEFRA requirements. (See 7 CFR 273.2(b).)

Plan of Operation

The rule would require that in an attachment to their Plan of Operation State agencies describe the procedures they will use in SIEVS, and provide copies of forms and agreements with other agencies. In addition this document would include a description of priorities which State agencies would use to determine which information obtained from the SIEVS is most likely to be useful in verifying eligibility and benefits. The description would include how the priorities would be used and how they would be reviewed periodically and modified based on experience with the operation of SIEVS. The Department expects that in developing priorities State agencies will consider two particular aspects of household circumstances. The first is whether the household is participating when the information is received. The Department places a great deal of importance on assuring that current benefits are correct. The second is the size of the apparent discrepancy. The Department believes that many apparently minor discrepancies are not actual discrepancies at all or have no impact on eligibility or benefits. Notwithstanding these general guidelines, the Department also believes that some discrepancies for households which are no longer participating warrant follow up, and we encourage State agencies to include some criteria for action on such households. Finally, as already discussed, the Plan of Operation would include any application for alternate data bases. Submission of SIEVS through the Plan of Operation permits FNS review and approval and assures compliance with the objectives and timeframes of the legislation. (See 7 CFR 272.8 (g) and (h).)

State Agency Reporting of Match Success

As mentioned in the general preamble, there would be certain reporting requirements pertaining to SIEVS. In order to obtain State agency comment on these requirements the Department is using this proposed rule to describe the details of what it is considering. An annual report would be required detailing match results: the number of claims established and their dollar value, and the number of households terrminated and reduced through quarterly wage, SSA information, IRS unearned income, and UIB matches respectively. Also required would be the number of referrals (number of SSNs sent to the data base), the number of raw hits (positive returns showing earnings, etc.) and number of "priority hits" as defined by each State Plan of Operation. Success data for each match data base would be reported separately for applicant and recipient matches. This and other success data would be evaluated to determine whether regulatory changes to FNS matching provisions are needed in the future. Through the use of profiling and other data analysis, FNS may identify certain matches which may prove more cost effective than others. Therefore, the types of data bases matched and/or the frequency of certain matches may need to be increased or decreased. A new form or other method of reporting would be developed by FNS.

FNS expects that in order to report, State agencies would have to collect other match success measures in addition to those reported. The Department is considering requiring that whenever a State agency performs a match to any data base, the following information would be collected regarding that particular match:

(1) The data file matched against (e.g., SWICA quarterly wage file, or the IRS unearned income file);

(2) Time period covered by the match;

(3) Date match initiated;

(4) Date raw match results received;

(5) Number of files (SSNs) submitted;

(6) Number of raw matches returned (number of SSN hits returned by the data provider agency);

(7) Number of households terminated due to the match;

(8) The cumulative dollar value of all past overpayments discovered on terminated cases;

(9) Actions that were completed by the 180th day;

(10) The number of households for whom benefits were decreased;

(11) The cumulative dollar value of all past overpayments discovered on households for which benefits were reduced;

(12) Number of *applicant* households for which pending applications were denied (do *not* include here households being recertified—only those new to the Food Stamp Program);

(13) The number of households for whom benefits were increased; and

(14) Number of fraud referrals made.

The above information would be retained in State agency records and provided to appropriate staff as requested; e.g., it would be made available to FNS Management Evaluation reviewers and to auditors and investigators from the Office of the Inspector General and the General Accounting Office. the Department is interested in comments about these reporting and recordkeeping requirements. (See 7 CFR 272.8(i).)

Review by FNS

Current rules provide for FNS review of actions taken on wage match information and for the possibility of FNS requiring additional action to ensure that such information is used to protect the integrity of the Food Stamp Program. This rule would delete that provision because State agencies would develop plans of operation incorporating standards for action. FNS would review actions taken as part of Management Evaluation reviews.

Quality Control

The rule would require that the field investigation of each quality control active sample case include a review of any information pertinent to the case which might be available through SIEVS. This would be required to help assure an accurate error rate. (See 7 CFR 275.12(c).)

Implementation

As stated in the general preamble, the legislation mandates an effective date of April 1, 1985, with the possibility of waivers to September 30, 1986 if good faith efforts to comply are documented. Food Stamp Program rules would continue this effective date and require that State agencies be fully implemented within 90 days of final rules or submit by that date a request for good faith waivers. If implementation is not complete, the attachment to the Plan of Operation described earlier in this preamble must specify an implementation schedule identifying how and when implementation of the various component of the SIEVS will be accomplished. In no event shall implementation schedules beyond September 1986 be approved, except as necessary to accomodate a SWICA. Any request for a delay would be accompanied by documentation of good faith efforts to comply. These good faith efforts would have to include a demonstration of compliance with current wage match requirements, assurances of maintenance of these efforts, and documentation that the proposed implementation schedule is as fast as the State agency can reasonably implement. The Plan of Operation and implementation plans would be submitted not later than 90 days from the date of publication of the final rule. The Secretary would consult with the Secretaries of Health and Human Services, and of Labor prior to approving any Plans of Operation documenting good faith efforts. No delay

of the provisions for SIEVS notification of households would be allowed beyond the date the State implemented any of the SIEVS provisions. With respect to State SWICAs, State agencies which do not have one or April 1, 1985 would be required to have one as soon as possible but in any event would be required to have one in operation so that wage information will be reported by employers starting with the month of October 1988. (See 7 CFR 272.1(g)(70).)

Textual Reorganization

Current rules contain pertinent material on wage matching in paragraph 273.21(f)(9), which deals with verification. Because of the substantial revisions to this material and because it involves State agency level procedures, most of the material on the SIEVS would be placed in a new section, § 272.8.

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

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

7 CFR Part 273

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

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 271, 272, 273, and 275 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2, the definitions of "State Income and Eligibility Verification System" (SIEVS) and "State Wage Information Collection Agency" (SWICA) are added in alphabetical order to read as follows:

271.2 Definitions.

* * * * *

State Income and Eligibility Verification System (SIEVS)—means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of Section 1137 of the Social Security Act, generally referred to as the SIEVS.

State Wage Information Collection Agency (SWICA)—means the State agency administering the State unemployment compensation law, another agency administering a quarterly wage reporting system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data as the two just mentioned agencies.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (c) is revised and paragraph (g) is amended to add a new paragraph (70) in numerical order. The revision and addition read as follows:

272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in § 273.2(j)(2).

(ii) Persons directly connected with the administration or enforcement of the programs specified in § 272.8(a)(2), which programs are required to participate in the State income and eligibility verification system (SIEVS), to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amounts under those programs;

(iii) Persons directly connected with the administration of the Child Support Program under Part D Title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under Titles II and XVI of the Social Security Act;

(iv) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(v) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, the violation being investigated, and the identity of the person on whom the information is requested.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received from third party sources through the SIEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to Section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards and restrictions established by the Secretary of the Treasury as specified in Sections 6103(l) and 7213 of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines.*

* * * * *

(g) Implementation. * * *

(70) *Amendment 264.* These rules are effective April 1, 1985. Within 90 days of publication State agencies are required to submit the attachment to their State Plan of Operation specified in §272.2 and in § 272.8(h), documenting either full implementation of these rules or describing good faith efforts to implement them. To be approvable, a plan describing good faith efforts shall, at a minimum, document that the State agency is currently in compliance with wage match criteria as specified in the final rulemaking of November 5, 1982 (47 FR 50180), assure that such compliance will continue at current levels until such time as these provisions are implemented, and provide an implementation schedule that reflects full compliance in the minimum amount of additional time. Implementation schedules beyond September 30, 1986 are not approvable, with the exception of SWICA's discussed below. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to the approval of Plans of Operation documenting good faith efforts. In no event shall the Secretary approve a delay of the provisions of individual notification in § 273.2(b)(9) beyond the initial implementation date

of any of these new provisions. If on April 1, 1985 no SWICA exists in a particular State, the provisions of this rule as they relate to SWICAs shall be effective upon the designation of a SWICA. Implementation of a SWICA after April 1, 1985 shall take place as soon thereafter as possible but in any event no later than September 30, 1988. All SWICAs with delayed implementation shall be in operation so that wage information is reported to them starting with the month of October 1988.

3. In § 272.2 the seventh sentence of paragraph (a)(2) is revised, and a new paragraph (d)(1)(iv) is added. The revision and addition read as follows:

§ 271.2 Plan of operation.

(a) *General Purpose and Content.*

* * *

(2) * * * The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the optional Nutrition Education Plan, and the plan for the State Income and Eligibility Verification System. * * *

* * * * *

(d) *Planning documents.* (1) * * *

(iv) A plan for the State Income and Eligibility Verification System required by § 272.8.

* * * * *

4. A new section, § 272.8, is added to read as follows:

§ 272.8 State Income and Eligibility Verification System.

(a) *General.* (1) State agencies shall maintain and use an income and eligibility verification system (SIEVS), as specified in this section. By means of the SIEVS State agencies shall request wage and benefit information from certain agencies and use that information to the extent that it is useful in verifying eligibility for and the amount of food stamp benefits due to eligible households. The wage and benefit information and agencies are:

(i) State wage information maintained by the State Wage Information Collection Agency (SWICA);

(ii) Information about such items as net earnings from self-employment, wages, payments of retirement income maintained by the Social Security Administration (SSA) and available pursuant ot section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code, and Federal retirement, survivors, disability, SSI an related benefit information available from SSA;

(iii) Unearned income information from the IRS available pursuant to section 6103(1)(7)(B) of the IRS Code; and

(iv) Any additional information available from agencies administering State unemployment compensation laws subject to the provisions of Section 303(d) of the Social Security Act, subject to the limitations specified in that Section.

(2) Also by means of the SIEVS State agencies shall exchange with State agencies administering certain other programs in the SIEVS information about food stamp household circumstances which may be of use in establishing or verifying eligibility or benefit amounts under those programs. State agencies shall exchange such information with these agencies in other States when the same objectives are likely to be met. These programs are:

(i) The Aid to Families with Dependent Children (AFDC);

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under Title I, X, or XIV (the adult categories), or Title XVI of the Social Security Act.

(3) Under the conditions specified in paragraph (f)(5) of this section, State agencies shall request and use information available from UC agencies other than information about unemployment compensation to the extent useful for verifying eligibility and benefits.

(4) *Agreements.* Prior to requesting or exchanging information with other agencies, State agencies shall execute with those agencies data exchange agreements which shall specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements shall be part of the State agency's Plan of Operation, as required by paragraph (h) of this section. These agreements shall cover at least the following areas:

(i) Identification of positions of all agency officials with authority to request wage information;

(ii) Methods and timing of the requests for and types of information, including the formats to be used;

(iii) The safeguards limiting release or redisclosure as required by Federal or State law or regulation as discussed in § 272.1(c); and

(iv) Reimbursement agreements, as appropriate, including new developmental costs associated with the furnishing of data to receiver agencies as defined in this regulation.

(5) *Uses of data.* The State agency shall use information obtained by means of the SIEVS system for the purposes of:

(i) Verifying a household's eligibility;

(ii) Verifying the proper amount of benefits;

(iii) Investigating to determine whether participating households received benefits to which they were not entitled; and

(iv) Substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(b) *State Wage Information.* The wage information maintained by a State Wage Information Collection Agency (SWICA) which is not a UC agency shall:

(1) Contain the Social Security Number (SSN), full name, wages earned for the period of the report for each employee, and an identifier of the employer such as name and address;

(2) Include all employers covered by the State's UC law;

(3) Be accumulated by employers for no longer periods than calendar quarters and shall be reported by employers to the SWICA within 30 days of the end of ech quarter;

(4) Be machine readable; and

(5) Be accessible to agencies in other States which have executed agreements as required in paragraph (a)(4) of this section.

(c) *Alternate data sources.* The Secretary may, upon application from a State agency included in the attachment to the Plan of Operation specified in paragraph (h) of this section, permit a State agency to request and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The application shall document that the alternate source or sources provides accurate and timely information that is as useful for verifying eligibility and benefit amounts. State agencies shall comply with the requirements specified in paragraph (a) of this section unless this application for an alternate source has been approved. The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to approval of any alternate data source.

(d) *Form of data requests and exchanges.* Requests for wage and benefit information and exchanges of eligibility and benefit information with the programs specified in paragraph (a) of this section shall be in the formats required by the Secretary for SWICA.

UC and other State, and in the formats prescribed by the Commissioners of SSA and IRS for SSA and IRS requests.

(e) *Obtaining and using information.* State agencies shall obtain and use information from the following sources according to the following timeframes; except as noted in paragraph (e)(6) of this section:

(1) Information from the SWICA for all household members shall be obtained and used to determine eligibility during the 30-day application period and obtained and used quarterly to adjust benefits as appropriate for recipients.

(i) Requests for applicant matches shall access the most recent SWICA wage data available.

(ii) For quarterly requests the food stamp data base shall include all households which participated in any month of the quarter.

(2) Information from SSA shall be obtained and used to determine eligibility and benefits for all households at application within the 30-day timeframe for application processing specified in § 273.2(g). The requests shall be submitted by means prescribed by the Commissioner of SSA. Information received from SSA as updates to requests to SSA files shall be used to adjust benefits of recipient households as appropriate.

(3) Information from IRS shall be obtained and used to determine eligibility and benefits for all households at application during the 30-day application period and shall be obtained and used to revise benefits as appropriate annually for recipients. The requests shall be submitted by means prescribed by the Commissioner of IRS.

(4) Exchanges of information with other programs as specified in paragraph (a) of this section shall be made as the State agency and other programs may agree, except that to determine eligibility and benefits and revise benefits as appropriate all State agencies shall obtain and use information about Unemployment Insurance Benefits (UIB) from the agency administering that program as follows:

(i) For all members of households applying for benefits, within the 30-day timeframe for application processing specified in § 273.2(g);

(ii) For all such members about whom such requests indicate no receipt of UIB at application, for the three months subsequent to the month of application or until the receipt of UIB is reported, whichever is earlier;

(iii) For all such members who report a loss of employment, in each of the three months after the member reports; and

(iv) For any recipient receiving UIB, in each month until UIB are exhausted.

(5) If UC agencies have information other than UIB information which State agencies determine would be useful in verifying eligibility or benefits, State agencies shall request such information by methods and at the periodic intervals to which they and the UC agencies agree for those households for which State agencies determine it appropriate.

(6) If a State agency is otherwise able to make an eligibility determination, that decision shall not be delayed while awaiting receipt of information from one of these sources of information. Such information obtained after an eligibility determination shall be used as specified in paragraph (f) of this section.

(f) *Actions on recipient households.* (1) Within 20 days of receiving information about recipient households from the sources specified in paragraphs (e)(1) through (4) of this section, State agencies shall:

(i) Review the information and, by means of the priorities established as specified in paragraph (g) of this section, identify which information indicates discrepancies warranting case record review;

(ii) Review case record information and contact the households and/or collateral contacts to resolve discrepancies as specified in § 273.2(f)(4)(iv) and § 273.2(f)(9)(iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, send notices of adverse action. Such action would be effective according to § 273.12(c)(2) or the retrospective budgeting provisions at § 273.21.

(2) When the actions specified in paragraph (f)(1) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in § 273.18.

(g) *Priorities.* State agencies shall review the information obtained as required in paragraph (e) of this section and give priority to action on this information most likely to be useful in verifying eligibility for food stamps and the amount of food stamp benefits due to eligible households. State agencies shall include in the attachment to their Plan of Operation specified in paragraph (h) of this section a description of their priorities, how these priorities will be used, and how those priorities will be periodically reviewed and modified as appropriate based on operation of the SIEVS.

(h) *Plan of Operation.* The requirements for the SIEVS specified in this section shall be included in an attachment to the State agency's Plan of Operations as required in § 272.2(d). This document shall include a description of procedures used, copies of forms, priorities as specified in paragraph (g) of this section, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements for limiting disclosure of information obtained from food stamp households and third parties as specified in § 277.1. This document shall also include any of the material concerning alternate data sources as specified in paragraph (c) of this section.

(i) *Reports to FNS.* The State agency shall provide reports as the Secretary prescribes for the purpose of determining compliance with the requirements of this section and evaluating the effectiveness of the SIEVS.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.2, paragraph (b) is amended by the addition of a sentence at the end; paragraph (f)(1)(v) is revised; paragraph (f)(4)(ii) is amended by removing everything after the fourth sentence; paragraph (f)(4)(iv) is revised; the title and contents of paragraph (f)(9) are revised; and the sixth sentence of paragraph (i)(4)(i)(B) is revised. The amendments and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(b) *Food stamp application form.* * * * All applicants for food stamp benefits shall be notified at the time of application through a written statement on or provided with the application from that information available through the income and eligibility verification system (SIEVS) will be requested and used by the State agency and that such information may affect the household's eligibility and level of benefits.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social Security Numbers.* The State agency shall verify the Social Security Number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to

its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the SIEVS described in § 272.8. An SSN shall be considered verified if an inquiry to SSA for social security benefit or wage or other information, or for SSI information has provided wage, benefit or other information associated with the SSN. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS–5, Application for a Social Security Number, to the SSA in accordance with procedures in § 273.6. Once an SSN is provided, it shall be verified as required by this paragraph.

* * * * *

(4) *Sources of verification.* * * *

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the SIEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

* * * * *

(9) *Use of SIEVS.*

(i) The state agency shall use information obtained through the SIEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in § 272.8.

(ii) The State agency may access data through the SIEVS provided the disclosure safeguards and data exchange agreements required by Part 272 are satisfied.

(iii) The state agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtained through the SIEVs which is considered verified upon receipt. This information is social security and SSI benefit information obtained for SSA, and AFDC benefit information and UIB information obtained from the agencies administering those programs.

(iv) Prior to taking action to terminate, deny, or reduce benefits based on unverified information obtained through the SIEVS, state agencies shall independently verify the information. Such unverified information is unearned income information from IRS, and wage information from SSA and SWICAs. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred.

(v) The State agency shall obtain independent verification of unverified information obtained from SIEVS by means of contacting the household and/or the originator of the information. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within a specified time. If the household fails to respond timely, the State agency shall send it a notice indicating the expiration of its certification period and the necessity to reapply timely. If the household refuses to provide the requested verification, the state agency shall terminate its eligibility for failure to cooperate. The State agency may contact the originator of the information by the means best suited to the situation. When the household or originator of the information provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

* * * * *

(l) *Expedited service.* * * *

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

(i) * * *

(B) * * * Those household members unable to provide the required SSN's or who do not have one prior to the first full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements in accordance with § 273.6(d). * * *

6. Section 273.6 is revised in its entirety to read as follows:

§ 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS–5. State agencies which have such an agreement with SSA for AFDC and Medicaid shall be required to renegotiate these agreements for food stamp purposes as soon as possible in order to offer this service to food stamp applicants and participants. To complete Form SS–5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA. The State agency can complete the SS–5 only when this renegotiated agreement between SSA and the State exists.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt for Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(c) *Failure to comply.* If the State agency determines that a household member(s) has refused or failed without good cause to provide an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual(s) for which the SSN is not provided and not to the entire household. The earned or unearned income of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income to the extent

specified in § 273.9(b)(3) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, the Social Security Administration and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household has applied for the number or made every effort to supply SSA with the necessary information shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member(s) can show good cause why an application for an SSN has not been completed in a timely manner, they shall be allowed to participate for one month in addition to the month of application. If the household member(s) applying for an SSN has been unable to obtain the documents required by SSA, the State agency caseworker should make every effort to assist the individual(s) in obtaining these documents. Good cause for failure to apply must be determined at the end of each month of participation, and if shown, the household member may continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSN.* The State agency is authorized to use social security numbers in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under Title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the SIEVS as specified in § 272.8.

(g) *Entry of SSNs into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all social security numbers obtained in accordance with § 273.6(a)(1) into these files.

PART 275—PERFORMANCE REPORTING SYSTEM

7. In § 275.12, paragraph (c) is amended by the addition of a sentence following the first sentence. The new sentence reads as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation* * * * A full field investigation shall include a review of any information pertinent to a particular case which is available through the State Income and Eligibility Verification System (SIEVS) as specified in § 272.8.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

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

Dated: February 8, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 205, 206 and 232

Aid to Families With Dependent Children; Adult Assistance Programs

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–448, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m., on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Levering, Office of Family Assistance, Social Security Administration, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION: The Social Security Administration is proposing to amend regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV–A and the adult assistance programs under titles I, X, XIV and XVI (AABD) of the Social Security Act. This action is being taken to implement section 2651 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) regarding income and eligibility verification procedures. Specifically, we propose to amend 45 CFR Parts 205, 206 and 232.

The Office of Family Assistance (OFA), in the Social Security Administration (SSA), is proposing amendments to existing regulations under title IV–A and titles I, X, XIV and XVI (AABD) of the Social Security Act in order to implement section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369). This section amended the Social Security Act, the Food Stamp Act and the Internal Revenue Code for the purpose of establishing uniform procedures for obtaining and using income and eligibility information in the administration of federally-funded benefit programs, including the Aid to Families with Dependent Children (AFDC) program under title IV–A of the Social Security Act and the adult assistance programs under titles I, X, XIV and XVI (AABD) of the Social Security Act.

We propose to implement those sections of the Social Security Act added by section 2651 of DEFRA which affect the AFDC and adult assistance programs. Section 402(a)(25), as amended, requires the State plan for title IV–A to provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system that meets the requirements of section 1137 of the Act. Sections 2(a)(11), 1002(a)(14), 1402(a)(13) and 1602(a)(15) extend this requirement to the adult assistance programs.

The requirements of the statute and these proposed regulations are discussed in the general preamble. In summary this statute supersedes the requirement for wage matching for the AFDC program but retains wage matching as a key element in the broader Statewide Income and Eligibility Verification System (SIEVS). This information includes wage and other information provided by the

several agencies identified in the general preamble: State Wage Information Collection Agencies, as defined in the proposed regulations, State unemployment compensation agencies, the Social Security Administration (SSA), and the Internal Revenue Service (IRS). Programs required to exchange information are: the Food Stamp program, Unemployment Compensation (UC), Medicaid, the AFDC program and State administered adult assistance programs in Puerto Rico, Guam and the Virgin Islands.

The proposed regulations are designed to ensure that State agencies administering the AFDC and adult assistance programs avail themselves of that information and use it. Additional authority for these requirements exists in section 402(a)(5) of the Social Security Act, which allows the Secretary to prescribe methods of administration found by the Secretary to be necessary for the proper and efficient operation of a State's plan. Section 402(a)(6) of the Act also allows the Secretary to require State agencies to report certain information and comply with provisions necessary to assure the correctness of the information reported. Comparable sections are contained in the adult assistance program statutory provisions.

For the purpose of extending these requirements to all of these benefit programs, DEFRA deletes the sections of the Social Security Act requiring wage matching in the AFDC program and requiring applicants for title IV–A to furnish SSNs. New requirements for wage matching and furnishing SSNs are included among other statutory requirements in a new section 1137 of the Social Security Act. Therefore, we have attempted to retain the organization of the current regulations in these areas and modify them only as appropriate to meet the additional requirements of the new statute.

Although the discussion of current rules includes some requirements which apply only to AFDC, the proposed rules apply equally to the adult assistance programs under title I, X, XIV, and XVI (AABD) of the Social Security Act (the Act), except with respect to proposed amendments to the regulations regarding the quality control system.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any rule that is a major rule. A major rule is one that: has an annual effect on the economy of $100 million or more; results in a major increase in costs or prices; or has significant adverse effects on competition, employment, investment, productivity, or innovation.

The legislation and regulations considered here may have an annual effect of more than $100 million. For the most part, these program costs and savings are the direct result of the Deficit Reduction Act and not the discretionary latitude of the Secretary. Therefore these regulations do not constitute a "major rule" and an impact analysis describing potential benefits of the regulations and alternative approaches and their costs and benefits is not required.

Paperwork Reduction Act

The proposed amendments to the State Plan requirements contained in 45 CFR 205, 206 and 232 are subject to Office of Management and Budget (OMB) review. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to OMB for its review and approval of these requirements. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comments on these requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, ATTN: Robert J. Fishman.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. For each particular regulation with a "significant impact on a substantial number of small entities" (e.g., small businesses) we must publish an initial analysis describing the regulation's impact on them. This analysis is to indicate the purpose and reason for the regulation and the number of small businesses to which it would apply, to anticipate reporting and recordkeeping requirements, to identify possible overlap and conflict with other Federal regulations and to describe possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

We certify that these regulations will not have any significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments and individuals. We do not believe that any provision will have direct impact on small businesses or other small entities within the intent of the Regulatory Flexibility Act and, therefore, a regulatory flexibility analysis is not required.

Discussion of Major Provisions

Statewide Income and Eligibility Verification System (SIEVS)

Section 2651 of DEFRA amends titles I, IV–A, X, XIV and XVI (AABD) to require that a State plan provide that information necessary for verification of income and eligibility is requested and exchanged in accordance with a State system which meets the requirements of section 1137 of the Social Security Act. We have termed this the Statewide Income and Eligibility Verification System (SIEVS); we propose to include the SIEVS as a new State plan requirement at section 205.51(a).

Under this proposed regulation, the State agency must participate in a State system that ensures coordination among federally-funded benefit programs in obtaining and exchanging information. The purpose of imposing this State plan requirement is to ensure that by the effective date of this provision, each State has such a system and that the State agency participates in it. The proposed regulations recognize the need for differently structured verification systems State-to-State by allowing the benefit programs in each State to work out procedures which, within the constraints of their resources, will achieve the objectives of the SIEVS and help assure the accurate determination of eligibility and benefit amounts. We are not proposing a new, separate system to carry out the provisions of the law and regulations. Rather, we expect State agencies to carry out these provisions within existing eligibility and information systems, making modifications only as necessary to meet the new requirements. The general preamble discusses the SIEVS in detail, and interested parties should reference that section for further information.

Access and Use of Information by Source

(a) Wage Information

Current regulations at § 205.56 require the AFDC State agency to request wage information about all current applicants and recipients on a quarterly basis from the agency administering the State's unemployment compensation (UC) program, commonly referred to as the State Employment Security Agency (SESA or UC agency), if that agency collects such information. If the SESA does not collect quarterly wage

information, the State agency is requried to obtain wage information semi-annually from the Social Security Administration. In forty-three States, the SESA currently provides wage information to the AFDC State agency. The remaining States are required to use SSA wage data and the adult assistance programs in the territories are not subject to the wage matching requirement.

Section 2651(b)(2) of DEFRA repeals section 402(a)(29) of the Social Security Act, which was the statutory basis for this requirement; however, section 2651(a) of DEFRA includes a new requirement that the AFDC and adult assistance programs in all States and territories obtain and use through the SIEVS wage information available from three sources:

(1) The agency administering the State unemployment compensation program (SESA), effective April 1, 1985;

(2) A State agency to which employers are required to report quarterly wages (which may be the SESA) by September 30, 1988 (unless the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, has determined that the State has an alternative system which is as effective and timely); and

(3) The Social Security Administration, effective April 1, 1985.

The proposed requirements for State agency use of wage data from the Social Security Administration are contained in a separate section of this preamble which discusses the use of all available employment and benefit related information from SSA.

For the 43 States in which the SESA currently collects quarterly wage reports from employers and provides this information to the State agency, the other two statutory wage matching requirements are effectively a single requirement. We interpret the requirement that the State agency use all available wage information from the SESA, separate from the requirement to use wage information from a quarterly wage reporting system by September 30, 1988, as an emphasis of Congressional intent that those States must continue wage matching. Although we have been more specific in these proposed rules regarding the use of this information for both applicants and recipients, we expect that in those 43 States there will be no interruption in the wage matching process, despite this change in statutory authority.

We recognize that in those States in which the SESA does not collect wage information from all employers (commonly referred to as wage request States), the SESA does maintain some wage information which could be made available to the State agency under this statutory provision. This would include, and may be limited to, wage information on individuals currently receiving unemployment compensation benefits in the State. Congress has directed that the use of all of the income and eligibility information made available under the statute should be targeted to those uses which are most productive in identifying ineligibility and incorrect payments. We have determined that the improvements necessary to obtain this information would not generally be the most productive use of resources in those States. Those resources should be dedicated to the timely development of a system for obtaining quarterly wage information (or acceptable alternative), as required by the statute. We have, therefore, chosen not to regulate specifically on this statutory provision as it affects wage request States, although we would note that the statute would authorize a State agency to request from the SESA any wage information that it determined to be useful in specific circumstances. We would expect, for example, that in a case where an applicant or recipient is simultaneously collecting unemployment compensation, the State agency in a wage request State may also want to obtain a wage history to help determine whether income exceeds the standard of need and whether erroneous welfare payments have been made.

To implement the statutory requirement that the State agency use wage information from an agency administering a quarterly wage reporting system (or acceptable alternative), we propose two related State plan requirements. First, we intend to revise section 205.51(b) for the purpose of adding a State plan requirement that the State have by September 30, 1988 a source of such information. This provision is intended to make it incumbent upon the State to have a system which meets the requirement of section 2651 of DEFRA which adds new section 1137(a) (2) and (3) to the Special Security Act.

Because we intend, through the second related State plan requirement, to prescribe a single set of requirements for obtaining and using State wage data, regardless of its source, we refer in the proposed rules to a single term for the source of State wage information. As defined in the proposed regulations, the State Wage Information Collection Agency (SWICA) can be the SESA, another State agency, if that agency collects quarterly wage reports from all employers covered by the State's unemployment compensation (UC) laws, or an acceptable alternative.

The purpose of this proposed State plan requirement is to provide an effective and timely source of wage data in every State available to the State AFDC agency and adult assistance program agency.

The proposed regulations at § 205.51(b) list those criteria for a SWICA which we believe are important to its effectiveness and timeliness. These include: (1) The necessary identifying information for each employee record; (2) a requirement that the information include, at a minimum, wages paid by all employers covered by the State's UC law and be reported within 30 days of the end of each quarter; (3) the frequency (at least quarterly) at which the information from an employer must be posted to an employee's record; (4) a requirement that the employee record system be machine readable; and (5) the accessibility of this information to the State agency and State agencies in other States for income and eligibility verification.

A State which currently maintains a quarterly wage reporting system, either through a SESA or through another State agency, or has an acceptable alternative would be required to declare that system as the SWICA, for purposes of meeting the State wage matching requirements.

In those 43 States in which the SESA collects wage data, the proposed State plan requirement for a SWICA would be met, as long as the SESA continues to collect such data and provides it to the State agency.

Any other States which elects to meet the new statutory requirement by requiring employers to report wage information to its SESA would also meet this State plan requirement.

As discussed in the common preamble, those SESAs which curreptly provide wage information to State agencies generally meet the SWICA criteria we have specified. The Department of Labor is encouraging all States to improve their procedures to fully meet the criteria where they do not. Some SESAs with older systems, for example, do not capture all employee information, such as full name. We believe, however, that it would not be prudent to require these agencies to change existing systems solely to meet the requirements of section 1137.

We do intend to review through the State plan approval process the method by which any other State might propose to meet this requirement. Whether this is a State agency which is not a SESA, but

which collects quarterly wage data, or is an alternative system appoved by the Secretary of Labor, we would apply the SWICA criteria listed in the proposed rules to our review prior to approval of the State plan amendment. Consultation with respect to alternative systems among the Departments of Labor, Agriculture and Health and Human Services would ensure that this source of wage data would meet the needs of all of the federally-assisted benefit programs which must use it.

In those States in which wage data is now collected by an agency other than the SESA (such as the Revenue Department), a change in procedures may be necessary before the agency would qualify as a SWICA. We encourage any State which is considering the use of such an agency as the SWICA to review its current procedures, including access to wage information by federally-assisted benefit programs in other States, with respect to these criteria. We believe that these requirements should be imposed in those systems developed for the purpose of providing wage data to the State agency and that they are necessary for the effective implementation of the income and eligibility verification system.

The second related State plan requirement proposed in these rules prescribes the use of State wage information by the State agency. We would require at § 205.55(a)(1) that State wage information be obtained by the State agency through the SIEVS from the SWICA for all applicants and, on a quarterly basis, for all recipients.

We have monitored the implementation of quarterly wage matching in those States which currently perform such matching. The General Accounting Office has also studied the process in selected States. We believe that the proven effectiveness of quarterly matching justifies the extension of this requirement to all States. Consistent with the requirements for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients. The proposed use requirement is discussed further in this preamble.

(b) Internal Revenue Service (IRS)

Section 2651(k)(1) of DEFRA amends section 6103(1)(7) of the Internal Revenue Code to require IRS to make current interest, dividend and other information available for use by certain State agencies. Section 1137(a)(2) of the Social Security Act, which was added by section 2651(a) of DEFRA, also requires States to obtain this information to the extent it may be useful in verifying eligibility of all applicants and recipients. This data might not only verify the unearned income being reported but might also assist State agencies in identifying bank deposits and other significant resources available to the individual or the assistance unit which were not reported. Although this source of information has not been previously available to States, some State agencies are effectively using unearned income information provided by banks and other institutions in identifying undeclared resources. IRS maintains a separate file of unearned income information reported by institutions on the "1099" and other forms for each tax year. For the purpose of providing information to States for income and eligibility verification, IRS will make available the annual file for the most recent calendar year for which the tax returns have been posted.

Upon execution of an agreement between IRS and the State agency, IRS will accept the State agency's request for information from this unearned income file. The State must provide via magnetic tape a file including identifying information on individuals from whom it is requesting unearned income data. After processing the request, IRS will provide the State via magnetic tape any unearned income data pertaining to those individuals. We will furnish each State agency with the *Revenue Procedure* which IRS will publish, specifying the technical and procedural requirements for obtaining this information. The proposed rules at § 205.55(a)(4) would require State agencies to request through the SIEVS unearned income information from IRS for all applicants and, on an annual basis, for all recipients.

We intend to provide further instructions to State agencies regarding procedures for the initial submission of current recipients to permit State agencies to best use existing staffing and computer resources. The instructions will provide further technical and procedural guidance, but would impose no substantive requirements on State agencies, beyond those discussed in these proposed regulations.

Consistent with the requirement for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients.

Interested parties may also wish to reference SSA Information Memorandum 83–11 (September 20, 1983, "Welfare Recipient Bank Match Information Package"), issued by OFA, for further information on current State uses of unearned income information.

(c) Social Security Administration (SSA)

The new statutory provisions and the proposed regulations at section 205.55(a)(3) require the State agency to request available employment, pension and benefit information from the Social Security Administration. Current AFDC regulations require only State agencies in those States without a State quarterly wage reporting system to obtain and use SSA data, and that requirement is limited to wage information from SSA's national wage file. Many other States, however, have been requesting and using information on title II and title XVI (SSI) and other Federal benefits from SSA in determining AFDC eligibility for benefits.

Because of the demonstrated usefulness of this source of information, the proposed regulations at § 205.55(a)(3) require the State agency to request SSA information through the SIEVS for all applicants in the manner set forth by the Commissioner of Social Security.

This information will include wage and self-employment information (which would supplement the more current SWICA wage information), as well as Federal benefit and private pension data. The State agency may request SSA information at application either through the Beneficiary and Earnings Data Exchange (BENDEX) system or through the Third Party Query (TPQY) system. We expect State agencies to use the TPQY system only in cases where sensitive, time critical conditions are evident. If the State agency uses the TPQY system at application, it must accrete the individual to the BENDEX system when the individual becomes a recipient.

The BENDEX system provides State agencies with updated information on current recipients whenever such information is available. Updated wage and other income data is provided when it is posted to the SSA files and benefit data is provided whenever there is a change made in the benefit amount. We anticipate no immediate change in current procedures for obtaining this information through the twice-monthly cycle of the BENDEX system, but we have written the proposed regulations to give the Commissioner flexibility to revise the manner of obtaining information as future changes in the

volume of requests or advances in technology warrant.

Consistent with the requirements for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients.

The proposed regulations also require that the State agency begin requesting this information for current recipients who have not already been accreted to the BENDEX system. We invite comments on the most efficient methods for phasing in current recipients.

(d) Exchanges Between Agencies and Between States

The statute requires State agencies administering the AFDC, adult assistance, Food Stamps, Medicaid and UC benefit programs, to exchange information with one another to the extent this information is useful and productive. With respect to the AFDC and adult assistance programs, we interpret this exchange to include both the obtaining of information from other programs for income and eligibility verification and the release of information to other programs for that purpose. Our proposed regulations would exercise the Secretary's authority under the Social Security Act to determine the usefulness of certain information. The proposed regulations, as discussed below, would require the State agency: (1) To request and use unemployment compensation benefit information under certain circumstances; (2) to request other information, as necessary; and (3) to provide information in its possession to other programs for similar purposes.

Unemployment Compensation. The proposed regulations require the State agency to request unemployment compensation (UC) benefit information through the SIEVS from the State SESA. Many State welfare agencies have already found this to be an especially valuable source of information because of the frequency with which it is updated.

The proposed rules at § 205.55(a)(2) would require the State agency to request and use this information: (1) In the month of application for all applicants, and (2) at the time a report is made by any recipient indicating a loss of employment. In both cases the agency would also be required to request the information for the three following months, unless the individual were found ineligible for aid under the State plan. Where the individual was found to be receiving UC benefits but remains eligible under the title IV–A or an adult assistance program, the State agency would be required to obtain UC information until these benefits were exhausted. We would require a continuing request in this limited circumstance because the level of UC benefits could change during the benefit period with a consequent effect on welfare eligibility or benefit amount.

These rules are intended to target the required use of UC information to those cases for which the information is most likely to be productive. However, a State agency may choose to regularly extend this match for a longer period of time after application or reported loss of employment and should, of course, request UC information in any other specific situation where it determines that the information might be useful.

Consistent with the requirements for timely use of all information obtained through the SIEVS, the State agency would be required to use this information within forty-five (45) days of the date of application for applicants and within twenty (20) days of receipt for recipients.

The requirement for obtaining this information for four months represents what we believe to be a period of time in which an individual who is eligible for UC could reasonably be expected to apply for such benefits. Together with the requirement for obtaining quarterly State wage information, we believe that this approach would provide the State agency with timely and comprehensive information on individuals with employment related income that would affect eligibility or benefit amounts. We solicit comments from interested parties on the proposed frequency of this data exchange and the required use of the information.

Other inter-program and inter-State data exchanges. Section 205.55(a)(5) of the proposed rules directs the State agency to request information through the SIEVS from other Federally-assisted benefit programs covered by section 1137 of the Act in the State and from the same programs in other States, as necessary. States within multi-State metropolitan areas and States in which a significant number of people work for an out-of-State employer have performed such matches with success. We propose to leave with the State agency the determination of the utility and frequency of matches with other States and with other assistance programs within the State. We would require, however, that the information acquired in this manner be treated in the same manner as other information requested pursuant to section 1137 and be subject to the same privacy and security safeguards.

We emphasize that the proposed requirements at §§ 205.55 and 205.56 are minimal reqirements. A State agency that currently obtains and uses information from sources other than those mentioned in the regulations or with more frequency than the regulations specify may continue to do so, to the extent that these verifications are effective and not redundant.

Requirements for Providing Income and Eligibility Infomation to Other Agencies. The proposed regulations at § 205.55(b) follow the statute and would require as part of the provision governing the exchange of information that the State agency make information in its possession available through the SIEVS to: (1) The AFDC, adult assistance, Food Stamps, Medicaid or UC programs in the State and in other States; (2) any Federal, State or local agency for purposes of administering the Child Support Enforcement program under title IV–D of the Social Security Act; and (3) the Social Security Administration for purposes of administering the OASDI and SSI programs.

This provision is intended to make two types of information available to be exchanged with other benefit programs through the SIEVS. The first type of information is eligibility information maintained by the State agency that may be requested by other programs covered by section 1137 of the Act for the purpose of identifying unreported benefits. Where an individual is eligible or applying for benefits in more than one federally-assisted benefit program (such as AFDC and Food Stamps), we expect the State agency and other agencies involved in the exchange of data to minimize costs by sharing the data through the SIEVS. This information may also be exchanged with a title IV–A program in another State for the purpose of identifying situations of improper receipt of dual benefits.

The second type of information which the provision would permit the State agency to exchange with the other agencies covered by section 1137 of the Act is income and benefit information obtained from the SWICA, UC agency, SSA and IRS on behalf of these agencies. We anticipate, for example, that the Food Stamps, Medicaid and AFDC programs in a State (and adult assistance programs in the territories) would pool their requests for information from these sources. This might be in the form of a single magnetic tape transmission including records of individuals eligible for these benefit

programs. The information on data exchanges from these cases might be returned to one of the programs which would then provide relevant information to the other programs. Such a procedure would help reduce the extra costs and delays associated with redundant requests.

The role which the State agency will play in supplying or receiving such information and exchanging it with other programs will vary from State to State, depending upon technical capabilities and organizational relationships. We expect that in some States the State agency will be responsible for transmitting these requests, and providing the responses to the programs which requested this data, and in other States the State agency will be making its requests through another program.

The proposed regulation would expressly permit the State agency to share the information that it receives with agencies and programs covered by section 1137 of the Act and to provide identifying information on AFDC and adult assistance program recipients to any other federally-assisted benefit program for the purpose of obtaining income and eligibility information.

(e) Uses of Information

The proposed rules are intended to fulfill the statutory directive that information obtained through the SIEVS be targeted at the most productive uses and to amplify current regulation at § 205.56(a) which sets forth the different circumstances for which such information may be used. Studies of computer matching in benefit programs have consistently demonstrated that the greatest cost savings are realized when ineligibility is indentified during the processing of the application before an overpayment is ever made; furthermore, recovery of those overpayments which are made is most successful when the individual is still a recipient and while the amount of the overpayment is relatively small. Because Congress clearly intended that the States and Federal government would maximize the potential cost savings to be derived from the information available under the new law, we believe it is necessary to impose the most stringent requirements practicable on the timely use of this information for both applicants and recipients.

With respect to applicants, the proposed rules at § 205.55 would require that the State agency obtain income and eligibility information and use it within forty-five (45) days of the date of application. We intend that information be obtained as soon as possible after initial application, used in processing the application, and that States will attempt to complete necessary follow-up before erroneous payments are made. The State eligibility determination, however, must meet the standard of promptness, as specified in current regulations. The State agency may not hold a pending application solely to await information which it has requested unless it has reason to believe that information reported by the applicant is not accurate. If the individual has become a recipient when the information is received, the State must complete its follow-up in the timeframe prescribed for recipients.

With respect to recipients, the proposed regulations at § 205.55(a)(6) would require the State agency to make an administrative decision regarding necessary case action on any information obtained through the SIEVS and to initiate a notice of findings to the recipient within twenty (20) days of receipt. During that period the State agency must complete any investigation or collateral verification of the information that it determines necessary or appropriate (including the required independent verification of unearned income information from IRS).

As specified in current regulations at § 205.10(a), the applicant or recipient must be given an opportunity for a hearing before the State agency could proceed to take appropriate action to deny, terminate, reduce or suspend benefits.

Prior to publication of the final rule, we intend to survey selected States regarding current methods for ensuring timely follow-up information obtained through wage matching and other activities. We are interested in determining how this requirement can be most effectively implemented. We recognize the significance of this timeframe in terms of the workload already placed on caseworkers and in terms of the State agency's primary responsibility for serving those in need. We invite State agencies to submit any relevant data that might suggest other reasonable standards for the timeliness of follow-up. To assist in the management of this workload, we propose two related actions that would require the evaluation of information received through the SIEVS and priorities for follow-up.

Proposed § 205.56(b) would require the State agency to compare the information obtained from each data exchange with any information obtained directly from the applicant or recipient and with other information in the case file. This requirement is intended to ensure that information obtained through data exchanges is evaluated prior to any case action. Such an evaluation would identify those cases requiring further contact with the source to ensure that the information is correct and to ensure that the information has not already been reported by the applicant or recipient, or has not been received from another source.

We also propose at § 205.56(c) to require the State agency to then give priority to acting upon the data most likely to be productive in preventing or identifying erroneous eligibility determinations and payments. This would permit the State agency to most quickly pursue those match results which represent the largest potential erroneous expenditures. This provision would provide flexibility to State agencies so that they can use techniques such as error prone profiles in prioritizing cases for follow-up.

To ensure that we can determine if the State agency is taking proper action, we would also require at § 205.56(c) that the State agency include in its State plan the methodology it will use in prioritizing data for case action. This methodology would cover all sources of information specified in these proposed rules. We emphasize, however, that the State agency must follow up on all information from all sources specified in the proposed rules which indicates potential ineligibility or erroneous payment within the timeframes specified in the proposed rules regardless of the priority assigned. The State agency would continue to be responsible for any eligibility or payment error identified by the quality control system.

We propose to amend the regulations implementing the quality control system at §§ 205.40 and 205.44 to make clear that the State AFDC agency is requrired to make information to which the State has access under section 1137 available to the Department as part of the Federal QC review process and to emphasize the availability of this information for State QC purposes. The use of all available income and eligibility information in the QC review process, as a source of verification, is essential to the ability of State agency management to effectively prioritize and target case actions. For this reason, we have deviated from our usual practice of specifying these sources only in the Quality Control Manual. We invite comments from State QC managers and other interested parties on how these requirements should be specified in the manual and in the final rules. The regulations at § 205.44 currently provide that, in a case where a State fails to complete a valid and timely QC sample,

the State will have an opportunity to negotiate a solution regarding the timely completion of the sample. The regulations prescribe the actions the Department may take in order to measure the State's error rate if the State is unable to negotiate a solution or fails to carry it out. Because of the significance of State error rate measurement in the computation of potential disallowances of Federal financial participation, we also solicit State comments on the possible effect of the proposed requirement on a State's ability to negotiate or carry out a solution for timely sample completion.

Finally, proposed § 205.60(b) would require that the State agency maintain a reporting system to track the current status and final disposition of all match results. We expect that this information on case status and disposition will be regularly reported to and used by agency management for the purpose of identifying situations in which timely action has not taken place and ensuring that appropriate action is ultimately taken. While DEFRA contains no specific requirement for a system for case tracking, we believe that the proper and efficient administration of the program requires that agency management be regularly informed of the status of follow up activities. We invite comments regarding the need for case tracking and alternative methods of maintaining this information.

Additional Procedural Requirements

(a) Furnishing and Verifying Social Security Numbers (SSNs)

Furnishing the SSN. Section 1137(a)(1) of the Act provides that the State shall require that each applicant and recipient in the AFDC, adult assistance, Food Stamps, Medicaid and UC programs be required to furinish his or her social security number (SSN) and that this number be used in income and eligibility verification. For the title IV–A program, this requirement is in § 232.10 of current regulations. For the adult assistance programs, however, this is a new requirement. We propose to redesignate current § 232.10 as § 205.52 and to make revisions necessary to newly designated § 205.52 so that the requirement would also apply to the adult assistance programs.

Verification of SSN. To implement section 1137(a)(1) of the Act the proposed rules would require the verification of the SSN for all applicants and recipients of assistance, in both the AFDC and adult assistance programs. This new requirement at proposed § 205.52(g) is intended to ensure that the SSN which is being used to obtain and exchange income and eligibility information is both valid and correct. Under the proposed rules at § 205.52(g) the State agency would be required to verify the SSN of an individual unless: (1) The State agency had received the SSN directly from SSA when the individual was enumerated; or (2) the SSN was reported as verified by another program participating in the SIEVS. Verification by the State agency would be conducted according to procedures set forth by the Social Security Administration. These procedures would include: (1) The conditions under which the SSN would be considered verified based on a response received through the BENDEX or TPQY system; (2) the method by which the State agency would transmit an SSN for verification through the SSA Enumeration Verification System (EVS); and (3) the steps to be taken by the State agency to assist SSA in the event an SSN cannot be immediately verified.

Applicants who apply for assistance on or after April 1, 1985 would have their SSNs verified during application, as described in the general preamble. However, the State agency would not be permitted under these proposed regulations to withhold approval of the application or to delay any of the required data exchanges during the verification process solely because the SSN has not been verified. The State agency would not be required to verify the SSN(s) of any recipients who became eligible before April 1, 1985, until the agency made a redetermination of eligibility.

In view of the new requirements for verification of SSNs, we are proposing to delete § 206.10(a)(9)(iii) (A) and (B). This section currently provides for checking the case record for the presence of an SSN and verification of the SSN, if necessary, during AFDC redetermination.

Proposed amendments to § 205.57 extend the requirement for the maintenance of an automated file containing the name and SSN of each applicant and recipient to adult assistance programs. We expect, although we do not require, that the State agency will maintain on the automated file an indicator that the SSN has been verified. This indicator would assist States in identifying unverified numbers and eliminating unnecessary retransmission of previously verified numbers. We intend to provide State agencies with further instructions for verification including the procedures to be issued by the Social Security Administration. These instructions will include the technical and procedural information necessary for verification but will not impose any substantive requirements beyond those proposed in these regulations.

(b) Standardized Formats and Procedures

Section 1137 of the Social Security Act requires that standardized formats and procedures be used in the exchange of income and eligibility information. Standardized formats and procedures can ensure the efficient exchange of information by eliminating incompatible record layouts and other obstacles. We propose to implement this provision by requiring that: (1) State agencies maintain an automated data file and that they use such file for data exchange purposes; (2) State agencies agree to use formats and procedures established by IRS and SSA in obtaining information from those sources and (3) State agencies co-ordinate with other federally-assisted benefit programs covered by section 1137 of the Act in the development of common formats and procedures for the sharing of information among those programs.

Agencies must use the record formats provided for in their written agreements with the SWICA, UC agency, IRS and SSA in requesting and obtaining information from those sources. As previously discussed, IRS and SSA will issue instructions on formats and procedures to be used in obtaining information from their files and we will transmit these instructions to State agencies.

We also propose to implement the provision for standardized formats by including in the State plan requirement for a SIEVS at § 205.51(a)(3) that the State agency use standardized formats for exchanging information with other programs covered by section 1137 of the Act. We intend to furnish State agencies guidelines for the use of standardized record formats and procedures to be used in exchanging information. These guidelines will be based on the conclusions and recommendations from the Inspector General's current pilot study, discussed in the general preamble. In developing these guidelines, we will work closely with IRS and SSA to ensure consistency between the formats and procedures for exchanging information within the SIEVS and for obtaining information from IRS and SSA.

(c) Reports and Maintenance of Records

Under authority of section 402(a)(6) of the Social Security Act, the proposed rules would amend § 205.60(c) to require the State agency to maintain statistical

records and provide reports on the use of information received from the various data exchanges, in accordance with guidelines to be issued by the Secretary. The proposed provision deletes the current reference to specific statistical records AFDC State agencies are now required to keep. We will provide State agencies with further instructions on the statistical information which must be maintained and the frequency of reporting of this information. We invite comment from State agencies on the types of statistical information they have found to be useful in managing and evaluating matching activities.

(d) Safeguards

Use and Disclosure of Information. The statute specifically requires that adequate safeguards be in effect to ensure that:

(1) Information is made available only to the extent necessary to assist in the valid administrative needs of the agency receiving the information and that the unearned income data from IRS is exchanged only with those agencies authorized to receive it: and (2) the information is adequately protected against unauthorized disclosure. We believe that current regulations adequately specify requirements to safeguard information and need only technical revisions to § 205.50 to address the additional sources of information available under the legislation. In addition to extending the requirement for safeguarding data from wage information to all income and other information received pursuant to matches conducted under § 205.55, we propose to add the unemployment compensation program to the list of programs to which disclosure of information is permitted.

Prompt Action. Current regulations at § 206.10(a)(3)(ii) require the State agency to take action on the application, pursuant to a reasonable State-established time standard. These regulations also prohibit the State agency from using that standard as a waiting period before granting assistance, or as a basis for denial of an application or for terminating assistance. When the wage matching requirement for AFDC agencies was instituted, § 206.10(a)(5)(ii) was added specifically to ensure that assistance would not be denied, delayed or discontinued by the State pending receipt of wage information, if other evidence established the individual's eligibility. We propose to amend this section to apply it to all sources of income and other information that the State agency is required to use under these proposed rules and to apply it to the adult assistance programs as well. This requirement reflects our concern that assistance to a needy individual not be delayed pending receipt of information from collateral sources where the State agency has no reason to believe that the individual has withheld information concerning income or resources.

(e) Notice to Applicants and Recipients

DEFRA requires that all applicants for and recipients of benefits under the programs participating in the income and eligibility verification system created pursuant to section 1137 must be notified at the time of application and periodically thereafter that information available through such system will be requested and used. The proposed rules at § 206.10(a)(2)(iii) would implement this provision by requiring that, at application and at every redetermination, individuals be notified in writing that information will be requested from certain specified sources to determine eligibility and benefit amounts. State agencies may wish to include this notice on the application form.

We also propose amending § 205.50(a)(3)(iii) to specifically permit State agencies to exchange information with other agencies, as specified in section 1137 of the Social Security Act, without express permission of the applicant or recipient. Applicants and recipients would only have to be notified of the data exchanges at application and redetermination as provided under section 206.10(a)(2)(iii).

(f) Reimbursement for Costs of Providing Data

Section 1137(a)(7) of the Act requires accounting systems to be utilized that ensure programs providing data receive appropriate reimbursement from the agency receiving the data. We propose to include at § 205.55 (d) and (e) a State plan requirement that State agencies reimburse other agencies, as appropriate, for costs incurred in providing information. The costs might include the necessary computer time for running the match program and generating output for the State agency. Reimbursement may also be made for computer software and other developmental costs associated with the furnishing of information. These costs, however must be for new development and must be directly related to the furnishing of data to the State agency.

We expect that those costs will be allocated among the programs in the State covered by section 1137 that are using the information obtained by the State agency. Costs that the State agency incurs would be pooled with all other eligibility related costs and distributed according to the agency's approved cost allocation plan.

Each State agency would be expected to maintain an accounting system to keep track of exchanges of information so that appropriate costs can be determined.

(g) Independent Verification of Information Prior to Taking Adverse Action

Because the unearned income information available from IRS is generally only a lead for the State agency to use in identifying bank deposits and other resources, Congress specified extra precautions concerning the verification of this information. Consistent with the Conference Committee's language regarding this subject, we propose to require at § 205.56(d) that the State agency verify the information by either sending the applicant or recipient a letter requesting verification of the asset or amount of the unearned income or by asking the source of the unearned income to verify the asset or the amount. If the State agency asks the applicant or recipient to verify the information, it must do so by letter; the letter should request that the individual respond within a certain period of time and it must clearly explain the information the agency has and its relevance to the eligibility of the individual or assistance unit. We emphasize our intent that State agencies would provide each individual with a reasonable opportunity to respond and would take into account special circumstances (including physical incapacity and language barriers) in implementing this provision.

This letter does not, however, constitute notice of termination or other action. If the individual were to fail to respond timely to the letter requesting verification, the State agency would have to proceed to take appropriate action to deny, terminate, reduce, or suspend benefits. The proposed regulations would follow the statute and require the State agency to notify the applicant or recipient of its findings, in case of adverse action based on its findings, and give an opportunity for a hearing (in accordance with existing notice and hearing requirements). We believe that the current provisions for notice and hearing at § 205.10(a) are adequate for this purpose and we are proposing no further changes.

Although Congress did not indicate that States must independently verify information other than unearned income information from IRS, we expect State

agencies to verify any information they receive that is not current or where their experience would otherwise indicate that independent verification is necessary. Failure to verify information that is not current might result in inappropriate action to deny, reduce or terminate benefits.

(h) Agreements

The new section 1137(a)(5) of the Social Security Act requires that safeguards be in effect to ensure that the information obtained for income and eligibility verification is protected from unauthorized or inappropriate disclosure. We propose to amend the current AFDC requirement at § 205.58 that the State agency maintain agreements with agencies supplying income and eligibility information to require that: (1) Agreements also be negotiated with agencies providing information other than wage data; and (2) the agreements specify the purpose of the request and the type of information to be provided. As in the current regulations, a State agency would have to outline in these agreements the measures it would take to safeguard information received and indicate what measures it would require other agencies to take if they in turn receive data from the State agency. Each agreement must also include the methods and timing of the request for information, the machine readable format to be used, and the time needed to furnish the requested information (including the basis for establishing this time period). The agreements must also specify the reimbursement to be provided to the agency furnishing the information, as described in the section on reimbursement in this preamble.

As discussed in the general preamble, DEFRA requires that programs participating in the verification system adhere to standardized formats and procedures for the purpose of exchanging information. Until we issue instructions and guidelines for the use of standardized formats and procedures, State agencies are expected to specify existing formats and procedures in any continued, renegotiated, or new agreements. That is, we do not anticipate that State agencies would modify existing format and procedure requirements until instructions and guidelines for standardized formats are issued. Once issued, State agencies would amend agreements to specify standardized formats and procedures in accordance with instructions.

State agencies should be aware that IRS will require additional documentation and certifications of data security as part of its agreement to provide unearned income information and should consult *Tax Information Security Guidelines for Federal, State and Local Agencies*, (Publication 1075; Rev. 7–83), published by IRS.

Use of Alternate Sources of Information

DEFRA provides that the income and eligibility information obtained by the State agency should be targeted to those uses likely to be productive in peventing incorrect payments. Thus, the statute envisions some flexibility in the application of these requirements. Under the proposed rules, the State agency would be required to obtain and use income and eligibility information available from the SWICA, IRS, SSA, and the unemployment compensation agency. Proposed § 205.55(c) would permit the State agency to obtain the information from an alternate source after it has demonstrated to the Department that the alternate source (or sources) furnishes information as timely, complete and useful for verifying eligibility. Prior to approval of the use of an alternate source, the Department would consult with the Departments of Agriculture and Labor to ensure that appropriate information is made available to all of the federally-assisted benefit programs that must use it.

Effective Dates

Except as otherwise noted, the requirements of Section 1137 of the Act are effective April 1, 1985. However, as permitted by section 2651(l)(2) of the statute, the Secretary may grant a delay not beyond September 30, 1986 in the effective date of any regulatory provision, except the provision requiring independent verification of IRS unearned income information, as specified in § 205.56(d). To be considered for such a delay, the State agency must submit within ninety days after publication of the final rule as plan describing a good faith effort to come into compliance with the requirements of section 2651 of Public Law 98–369 and the implementing regulations. The Secretary will consult with the Secretaries of Agriculture and Labor to ensure uniform application of this provision, where appropriate.

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these proposed rules.

These regulations are issued under the authority of section 1102 of the Social Security Act, as amendaed, 49 Stat. 647, as amended, 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid)

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs, Reporting requirements.

45 CFR Part 206

Aid to families with dependent children, Family assistance, Grant programs-social programs, Public assistance programs.

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family assistance, Grant programs-social programs.

Nelson Sabatini,

Acting Deputy Commissioner for Management and Assessment.

Approved: December 4, 1984

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

1. Section 205.40 is amended by revising paragraph (b)(1)(v) to read as follows:

§ 205.40 Quality Control System.

* * * * *

(b) *State plan requirements.* * * *

(1) * * *

(v) It shall assure access by HHS staff to State and local records relating to public assistance, to recipients, and to third parties, including information available under § 205.55.

* * * * *

2. Section 205.44 is amended by revising paragraph (d)(2) to read as follows:

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1984.

* * * * *

(d) *How we will measure a State's performance.* * * *

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, which includes obtaining and using information available under § 205.55, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its

sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods, error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

* * * * *

3. Section 205.50 is amended by adding paragraph (a)(1)(i)(F) and by revising paragraphs (a)(2)(i)(B) and (a)(3) (ii) and (iii) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* * * *

(1) * * *

(i) * * *

(F) The administration of a State unemployment compensation program.

* * * * *

(2) * * *

(i) * * *

(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

* * * * *

(iii) Except in the case of information requested pursuant to §§ 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

* * *

(3) * * *

(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

* * * * *

4. Section 205.51 is revised to read as follows:

§ 205.51 Income and eligibility verification reqirements.

(a) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be a Statewide Income and Eligibility Verification System in the State. Statewide Income and Eligibility Verification System (SIEVS) means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§ 205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency request information from the State Wage Information Collection Agency, as described in paragraph (b) of this section, the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code, and agencies in other States cited in § 205.55(a)(5), as set forth by the Secretary, from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Statewide Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Except where the SWICA is the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code, wage information maintained by a SWICA as required under paragraph (b) shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all employers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State and to agencies in other States, pursuant to agreements as required in § 205.58.

5. A new § 205.55 is added to read as follows:

§ 205.55 Requirements for obtaining and using eligibility and income information.

A State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will obtain through the SIEVS and use to revise benefits where necessary:

(1) Wage information from the SWICA for all applicants and, on a quarterly basis, for all recipients.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) At application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants and recipients in the manner set forth by the

Commissioner of Social Security. The State agency will also obtain and use such information for all individuals who are recipients as of the effective date of this provision for whom such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103(1)(7)(B) of the Internal Revenue Code of 1954, for all applicants and, on a yearly basis, for all recipients. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC progrm (in another State) under title IV–A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under a plan approved under title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(6) Information from sources specified in paragraphs (1)–(5) will be used where appropriate, by the State agency as follows:

(i) In the cse of applicants, to determine eligibility within forty five (45) days of the date of application; and

(ii) In the case of recipients, within twenty days (20) of receipt to determine eligibility and to initiate a notice of necessary case action.

(b) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in § 205.58;

(2) The agency in the State or other States administering a program under title VI–D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(c) The Secretary may, based upon application from a State, permit a State to obtain and use income information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(d) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in § 205.58.

6. Section 205.56 is revised to read as follows:

§ 205.56 Additional requirements governing the use of income and eligibility information.

A State plan under title I, IV–A, X, XIV, or XVI (ABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under § 205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan;

(2) Determining the amount of assistance;

(3) Investigations to determine whether recipient received assistance under the State plan to which they were not entitled; and

(4) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b) The agency must compare the information obtained from each data exchange against information on applicants and recipients maintained in the agency's files.

(c) The State agency will give priority to action on the information from each data exchange that is most likely to be productive in identifying and preventing erroneous eligibility determinations. The State agency must establish priorities and the State plan must specify the methods for reviewing and determining the priority to be accorded to different types of information.

(d) With respect to the information received under § 205.55 from the Internal Revenue Service concerning unearned income of an applicant or recipient:

(1) The agency shall not terminate, deny, suspend, or reduce benefits to the individual based on that information until it has taken the appropriate steps to independently verify the information, relating to:

(i) The amount of the resource or income involved;

(ii) Whether the applicant or recipient actually has (or had) access to the resource or income for his or her own use; and

(iii) The period or periods when the individual actually had the resource or income.

(2) The agency must verify the information by either:

(i) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income or the resource; or

(ii) Sending the applicant or recipient a letter informing the individual of the information received and asking him or her to respond within a specified period. The letter must clearly explain the information the agency has, its relevance to the individual's eligibility or benefit, and what action the agency will take in the event the individual fails to respond to the letter.

(3) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to subparagraph (d)(2), the agency must provide notice and the opportunity for a fair hearing in accordance with § 205.10(a).

7. Section 205.57 is amended by revising the section title, the introductory text and paragraphs (a) and (b) to read as follows:

§ 205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

(b) The State agency will use this file to exchange data with other agencies pursuant to § 205.55.

8. Section 205.58 is amended by revising the section title and paragraphs (a) and (b) to read as follows:

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A state plan under title I, IV–A, X, XIV, or XVI, (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written

agreements as described in paragraph (b) with those agencies providing income and eligibility information. The agreements will contain the procedures to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

(1) Purpose of the request;

(2) Identification of all agency officials, by positon, with authority to request information;

(3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period;

(4) The type of information and reporting periods for which information will be provided;

(5) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50; and

(6) Reimbursement, if any, for the costs of furnishing the information requrested by the State agency, including new developmental costs associated with furnishing such information.

9. Section 205.60 is revised to read as follows:

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV–A, X, XIV or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, and the provision of financial assistance. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility, (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The State agency will also maintain a record on the current status and final disposition of all cases for which income and eligibility information has been obtained pursuant to § 205.55.

(c) The agency will establish and maintain statistical records regarding the use of information received from agencies pursuant to § 205.55 and provide reports, in accordance with guidelines issued by the Secretary for the purpose of determining compliance with the requirements of §§ 205.55 and 205.56 and evaluating the effectiveness of these requirements.

10. A new section 205.62 is added as follows:

§ 205.62 Delay of effective date.

(a) If the agency submits, by [90 days after publication of the final rule], a plan describing a good faith effort to come into compliance with the requirements of section 1137 of the Act and these implementing regulations, the Secretary may grant a delay in the effective date of any provision of §§ 205.55 through 205.60 and § 206.10 implementing section 1137 (a) and (g) of the Act. The Secretary shall consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of any plan describing a good faith effort and may not grant a delay of the effective date of any provision beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of section 1137(c) of the Act, which is implemented by § 205.56. (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

11. Section 206.10 is amended by removing paragraphs (a)(9)(iii) (A) and (B), by adding a new paragraph (a)(2)(iii), and by revising paragraph (a)(5)(ii) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(2) * * *

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in § 205.55 and will be used to aid in determining their eligibility for assistance.

* * * * *

(5) * * *

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under § 205.55, if other evidence establishes the individual's eligibility for assistance.

* * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is proposed to be amended as set forth below:

12. Section 232.10 is redesignated as new § 205.52. Newly designated § 205.52 is revised to read as follows:

§ 205.52 Furnishing of social security numbers.

The State plan under title I, IV–A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account members.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of

eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may accept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

(Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 435

[BERC-321-P]

Medicaid Program; Income and Eligibility Verification

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-321-P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Faye Iudicello.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after today in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Joyce G. Somsak, 301-597-1354.

SUPPLEMENTARY INFORMATION: HCFA proposes to amend regulations in order to implement section 2651 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which concerns income and eligibility verification procedures to be developed and used by the State Medicaid agencies.

HCFA proposes to implement section 2651 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369) by establishing in regulations standards and procedures for Medicaid State agencies (including Medicaid agencies in the Mariana Islands, Puerto Rico, Guam and the Virgin Islands) for exchanging information with other agencies and for using information received to make determinations as to Medicaid eligibility and the amount of medical assistance payments. We propose to implement two of the sections added by section 2651 of DEFRA: Section 1137 and section 1902(a)(46), the latter of which requires the State plan to provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system that meets the requirements of section 1137 of the Act. Additional authority for these regulations exists in section 1902(a)(4) of the Act, which allows the Secretary to prescribe methods of administration found by the Secretary to be necessary for the proper and efficient operation of a State's Medicaid plan.

We are not proposing a new, separate system to carry out the provisions of the law and regulations. Rather, we expect State Medicaid agencies to carry out the provisions of the law within existing eligibility and information systems, making modifications only as necessary to meet the new requirements.

HCFA's regulations implementing section 2651 of DEFRA are basically organized in the same manner as the legislation. Below we discuss the provisions of the law, our proposed revisions to current regulations, and our proposed method of implementation.

Our regulations would apply to the State Medicaid agency only when it determines Medicaid eligibility. In those cases in which Medicaid eligibility is determined by the Federal agency administering SSI, the State agency administering State supplemental payments under section 1616 of the Act, or the State agency administering AFDC, the regulations and guidelines applying to those agencies would govern the verification of income and eligibility. The Medicaid agency remains responsible for determinations affecting the amount of medical assistance payments for reasons other than eligibility.

Currently, the Medicaid program does not require its State agencies to collect SSNs or to exchange or verify data with any other agencies. In fact, if a State did not have a statute or regulation as of January 1, 1975 requiring mandatory disclosure of a SSN by a recipient to verify his or her identity, the State Medicaid agency could not require an individual to disclose his or her SSN. Because of some automated procedures, SSNs are usually verified, but until these proposed regulations are published as final rules, we have no requirements regarding verifying data except that State Medicaid agencies are liable for incorrect eligibility determinations and incorrect medical assistance payments.

We emphasize that the proposed requirements constitute the minimum that would have to be followed. A State Medicaid agency that currently obtains and uses information from other sources than those mentioned in the regulations should continue to do so, to the extent that these verifications are useful and not redundant. The State Medicaid agency may also determine it would be useful to request and use the information at more frequent intervals than those specified. The State Medicaid agency may use the information at times and for purposes other than for determining initial eligibility and for redeterminations. For example, the State Medicaid agency may use the relevant information for the identification of legally liable third party payers of medical expenses. Similarly, while this regulation would require that only unearned income information from IRS be independently verified with the applicant or receipient or with the source of the income and resource (§ 435.955), the State Medicaid agency may have a requirement to verify other types of information independently. The agency's experience should guide its decision on whether to exceed these regulatory requirements on income and eligibility verification. The State Medicaid agency will continue to be responsible for the accuracy of its eligibility determinations and the amount of medical assistance payments.

A. General

We are proposing to revise a number of regulation sections, where necessary, to bring them into conformance with the law, and we are proposing to add several new sections at the end of Part 435, Subpart J, Eligibility in the States and District of Columbia. These new sections would be separated from the existing sections of Subpart J (to emphasize the existence of coexisting, related requirements) by an undesignated heading entitled "Income and Eligibility Verification". These provisions would also apply to the territories (Guam, Puerto Rico and the Virgin Islands): Part 436, which concerns eligibility in the territories, incorporates the eligibility requirements of Part 435.

We propose to have a basis and scope section, § 435.940, that summarizes the statutory requirements for State

Medicaid agencies, and that introduces the substance of the other new sections.

B. Obtaining SSNs

To implement section 1137(a)(1) of the Act, we propose changing § 435.910. Use of social security numbers, to require Medicaid State agencies to (1) obtain (rather than request, as currently provided) as a condition of eligibility, the SSN(s) of each individual for whom Medicaid services are requested (§ 435.910(a)); (2) obtain from SSA any previously issued SSN (instead of merely verifying a SSN) if the applicant or recipient does not recall his or her SSN (§§ 435.910(e) and 435.910(e)(3)); and (3) verify, in the manner prescribed by the Commissioner of SSA (§ 435.910(g)), the SSN of each applicant and recipient with SSA to ensure that the SSN was issued to that individual. We also propose to revise § 435.920(b) to require the State Medicaid agency to obtain and verify as required by § 435.910 at redetermination the SSN of any recipient for whom there is no verified SSN(s). We would consider the SSN verified if it were obtained through the SSA numeration process or if the applicant or recipient is receiving benefits under his or her own SSN under title II (retirement, survivors and disability) or XVI (SSI) of the Act. The Commissioner of SSA would prescribe these and any other methods for verifying SSNs in other instructions. We also would change a misprinted "sent" to "send" in § 435.910(e)(3).

The State Medicaid agency would not be required to obtain and verify the SSN(s) of recipients who become eligible before April 1, 1985, until the agency makes a redetermination, or until April 1, 1986, whichever comes first. Applicants who apply for Medicaid on or after April 1,1985 would have their SSN's verified during the application period.

C. Use of SSNs

Section 1137(a)(1) of the Act also requires the State Medicaid agencies to use SSNs to associate an applicant's or recipient's records with his or her SSN. We propose that each State Medicaid agency maintain data elements on each applicant and recipient, which would contain the individual's name and SSN to allow data to be obtained using the SSN (§ 435.960, Standardized formats for obtaining and using information for verifying income and eligibility). In order to obtain data from other agencies under the provisions of Section 1137 of the Act, the State Medicaid agency would have to provide a SSN.

D. Exchange of Data

To implement Sections 1137(a)(4) and 1902(a)(4) of the Act:

1. Our proposed regulations (in a new section, § 435.945, General requirements) list SWICA, IRS, SSA, and all the State-administered programs from which a State Medicaid agency would have to request data. The State Medicaid agency would be required to request the following:

a. From SWICA—State wage information;

b. From SSA—Information about net earnings from self-employment, wages and payment of retirement income and other information available under Section 6103(l)(7)(A) of the Internal Revenue Code of 1954, and benefit and other information available under titles II and XVI;

c. From IRS—Unearned income information available under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954;

d. Information about benefits and wages, and other information available from agencies administering State unemployment compensation laws under the provisons of 3304 of the Internal Revenue Code and Section 303 of the Act; and

e. Any additional income, resource or eligibility information relevant to determinations concerning eligibility or amount of medical assistance available from agencies in the State or in other States administering AFDC, Medicaid, UC, State-administered supplemental payment programs, food stamps, and titles I (assistance to the aged), X (aid to the blind), XIV (aid to the permanently and totally disabled) and XVI (aid to the aged, blind and disabled in Puerto Rico, Guam, and the Virgin Islands) of the Act as necessary to establish or verify eligibility.

In proposed § 435.945 we would require a State Medicaid agency to obtain the information from these agencies but we also intend to permit the State Medicaid agency to obtain the information from alternate sources if it can demonstrate to the Secretary that the alternate sources can furnish information as timely, complete and useful for verifying eligibility and the amount of medical assistance payments, or both if the alternate source is to be used for both purposes. The Secretary would consult with the Secretary of Agriculture and the Secretary of Labor before deciding whether the agency could use an alternate source.

We would require the State Medicaid agency to obtain and use information on applicants and recipients according to a timetable. From SWICA, it would have to obtain and use information, at minimum, for applicants during the application period, for recipients who are not institutionalized on a quarterly basis, and for institutionalized recipients, because of the small probability of their receiving wages, yearly only. (The application period is the period from the date of application to the date the agency mails notice of its decision to the applicant. This application period is generally 45 days for regular applicants and 60 days for applicants for disability). Similarly, it would have to obtain and use UC information from the State UC agency for applicants during the period of application and for each of the subsequent three months, unless the individual is institutionalized. (For purposes of these regulations, an individual is "institutionalized" when he or she is required to apply his or her income to the cost of medical care as required by §§ 435.725, 435.733 and 435.832). If the applicant is institutionalized, the agency would have to obtain and use the date only during the application period, unless the applicant is receiving UC benefits.

For institutionalized individuals, the probability that the individual is receiving UC may be too small for it to be useful for the State Medicaid agency to continue to obtain data after the request made during the application period, unless the applicant is receiving UC benefits. Therefore, we propose to allow the State Medicaid agency to decide whether to obtain and use UC data more frequently than yearly after the application period request. The decision would be based on experience showing the cost of obtaining and using the data relative to the benefits gained.

The agency would be required to obtain and use UC information for recipients at the time the recipient reports a loss of employment.

If the applicant or recipient is found to be receiving UC benefits, the State Medicaid agency would have to continue to request information until the benefits were reported to be exhausted. We would require requests to continue for any applicant or recipient who is receiving UC benefits because the level of UC benefits could change during the benefits period.

The State Medicaid agency would not be required to request UC information on recipients whose eligibility was established before Arpil 1, 1985.

The State Medicaid agency would have to obtain and use unearned income information from IRS, and wage and other information from SSA for applicants during the application period,

and for recipients on a yearly basis. (This would allow the State Medicaid agency to complete one data match with IRS and SSA for recipients after IRS and SSA update their records, or, in most cases, to wait until the point of redetermination.)

States would also be required to obtain and use benefit and other information available from SSA under titles II and XVI of the Social Security Act. States currently have the authority to gain access to benefit and other information and in most cases obtain and use it. Usually this access occurs through the Beneficiary and Earnings Data Exchange (BENDEX) and States Data Exchange (SDX) systems. These regulations propose that State *must* obtain and use this information at application, and yearly thereafter.

Aside from the specified minimum intervals, the State Medicaid agency would be responsible for requesting data more often as necessary. It would, however, have the flexibility to develop a plan (which would be required as part of its State plan) on how it will order the information for follow-up. (See section E, Targeting the Use of Information.)

The IRS will make specified information available only under IRS-specified circumstances; details may be obtained from the IRS. The IRS will honor only requests for specific information.

Since the State Medicaid agency would not know in advance whether it would need any data from other agencies, we would require the State Medicaid agency to described in its State plan how it would determine when to request data from these other agencies.

2. Section 435.945 also would require a State Medicaid agency to furnish upon request data to the above agencies, to SSA for aged, blind and disabled benefits (title II of the Act), for supplemental security income (title XVI of the Act) and to the child support program (Part D of title IV of the Act).

3. State Medicaid agencies would be required to furnish reports to the Secretary for purposes of determining compliance with these regulations and of evaluating the effectiveness of the income and eligibility verification system (§ 435.945(f)). The reports would include the number of applicants and recipients subjected to verification of a given type of data; the number of matches that occur in that verification; the number of followup actions taken because of the matches; the results of the followup actions; and the estimated savings and costs associated with the verification. We plan to issue further instructions concerning these reports in the State Medicaid Manual.

State Medicaid agencies would also be required to make these specific records and the use of these records available to HHS in accordance with established regulations at 45 CFR 74.24. These records would also be required to be used in completing Medicaid quality control (MQC) reviews in accordance with 42 CFR 431.800 and 42 CFR 431.804. Accordingly, the State Medicaid agency would be required to make all information contained in these records or information to which the State has access under Section 1137 available to HHS in accordance with 42 CFR 431.800(f) as part of the MQC review. Similarly, failure to include this information in the MQC review would be considered a failure to cooperate in completing the MQC sample in accordance with 42 CFR 431.804(c)(6) and would subject the State to remedies contained in that section and recovery of costs contained in 42 CFR 431.804(c)(7). The regulations sections would be modified to reflect the addition of Section 1137 information.

4. We also propose to amend § 435.4, Definitions and use of terms, to include SWICA for two reasons: to indicate the words for which the initials stand and to show the criteria an agency must meet to be considered a SWICA. SWICA is the State agency administering the State unemployment compensation law (a UC agency), a separate agency administering a quarterly wage collection system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be effective and timely in providing employment related income and eligibility data (Section 1137(a)(3)).

The wage information maintained by a SWICA that is not a UC agency must:

(1) Contain the SSN, full name, wages earned for the period of the report, and an identifier of the employer;

(2) Include all employers covered by the States' UC law;

(3) Accumulate earnings reported by employers for no longer periods than calendar quarters;

(4) Is reported to the SWICA within 30 days after the end of the quarter;

(5) Be machine readable; and

(6) Be accessible to agencies in other States and to the Federal government that have executed agreements as required in § 431.306(g).

5. In accordance with paperwork burden regulations (5 CFR 1320) and our procedures, State Medicaid agencies would be required to retain records obtained under Section 1137 of the Act for three years.

E. Targeting the Use of the Information

To implement section 1137(a)(4)(C) of the Act, we intend for the information received to be targeted to uses most likely to identify and prevent erroneous eligibility determinations and incorrect Medicaid payments. This means that while the data matches must be made, the State Medicaid agency would have the flexibility to develop a plan (to be required as part of its State plan) on how best to follow up on information from the matches. Of course, the State Medicaid agency would be liable for erroneous medical assistance payments as it is now. We consider it important that the requests for information be made upon application or as early in the process as possible to insure correct determinations and to prevent long periods of erroneous eligibility or incorrect medical assistance payments.

We are proposing that State Medicaid agencies be required to obtain and use information from SSA, IRS, SWICA, and UC agencies during the application period and periodically thereafter (according to the timetable discussed in Section D. above). This would ensure that State Medicaid agencies would have information available to use at the time of eligibility determinations and redeterminations (or soon after), and more often in the case of SWICA and UC data. We consider it reasonable to require that information be requested on all applicants and recipients, as the cost of incremental requests would be very small. As with current policy, the State Medicaid agency would not be able to delay onset or continuation of Medicaid benefits because the information is not received in time for an eligibility determination (§ 435.911).

We propose in § 435.945(c) to require that, if information obtained under proposed § 435.945 affects a recipient's eligibility or amount of medical assistance payments, the State Medicaid agency must formally notify the recipient, within 20 days of receipt of the information, of any adverse action it proposes to take. The formal notification would be that required by § 435.919 concerning a recipient's right to a fair hearing when eligibility or amount of medical assistance payments is affected adversely. If the agency verifies eligibility or income information, because the agency's experience has shown verification to be useful, or if it would be required to verify unearned income information received from IRS under § 435.955 (see section "K" below), the agency would have to verify the

information within the same 20 day period. The requirements of the proposed paragraph (c) would not relieve the agency of its liability for erroneous payments that occurred during the period before the agency received the information.

We propose to require the State Medicaid agency to review the information it has received on all applicants and recipients and give priority to acting upon the data most likely to be productive in preventing erroneous eligibility determinations and incorrect amounts of Medicaid payments (§ 435.945(d)). This would permit the State Medicaid agencies to pursue the most productive match first. The State Medicaid agency would be responsible for identifying the relevant data to follow up on. The State Medicaid agency would continue to be responsible for any eligibility or medical assistance payment error, whether or not it followed up on the information.

The State Medicaid agency would be required to develop and submit, as part of its State plan, a plan that outlines its method for reviewing and determining the priority of its information and its ordering of information for followup action (§ 435.945(d)).

F. Standardized Formats

To implement section 1137(a)(4) of the Act, we propose, in proposed § 435.960(a), the State Medicaid agency maintain the SSN, name and other data elements in a specified format on each applicant and recipient in order to be able to exchange the required information. The regulations propose that the State Medicaid agency must request the data in the manner and format prescribed in instructions issued by the Commissioners of IRS and SSA and by the Secretary of HHS for data from IRS, SSA and State agencies, respectively. In proposed § 435.960(b), we state that State Medicaid agencies must exchange data with SWICA, SSA and IRS in an automated fashion.

In proposed § 435.960(c), we would require the State Medicaid agency to compare the information obtained from each data exchange with data on file to eliminate superfluous information before forwarding the data to the caseworker for any followup action.

G. Written Agreements

Our proposed revision to § 431.306, Release of information, would add a new paragraph (g) that would require that the State Medicaid agency have a written agreement with any agency with which it exchanges data under Section 1137 of the Act (agreeing that information would be limited to that relevant to purposes directly connected with the administration of the Medicaid State plan). A State Medicaid agency would have to outline measures it would take to safeguard information to be received and to indicate what measures it would require the other agencies to take if it received data from the State Medicaid agency; the agreement must also specify how it will reimburse reasonable costs to the agency providing the information. However, the specifics would be worked out between the two agencies.

H. Safeguarding of the Information

Given the confidential nature of the information received under these provisions and the need to protect the privacy of applicants, recipients and former recipients, we propose to revise Subpart F, Safeguarding Information on Applicants and Recipients, § 431.300, Information on Applicants and Recipients, Basis and Purpose, by adding a new paragraph that reiterates the safeguarding requirements of Section 1137(a)(5) of the Act. That is, State Medicaid agencies would be required to (1) make available information under Section 1137 of the Act only to the extent necessary to assist in the valid administrative needs of the program receiving the information; (2) to assure that data received from the IRS on unearned income is exchanged only with agencies authorized to receive it under 6103(l) of the Internal Revenue Code of 1954; and (3) to protect the data adequately against unauthorized disclosure for other purposes, in accordance with regulations established by the Secretary of HHS.

Section 431.301 requires a State to provide, under a State statute that imposes legal sanctions, safeguards restricting the use or disclosure of information to purposes directly connected with administration of the plan. Section 431.302 gives four of the purposes that are directly related to plan administration: (1) Establishing eligibility; (2) determining the amount of medical assistance; (3) providing services for recipients; and (4) conducting or assisting in an investigation, prosecution or civil or legal proceeding relating to the administration of the plan. Section 431.303 requires the State Medicaid agency to have the authority to implement and enforce the regulations. Section 431.305 specifies that the data to be safeguarded must include at least names and addresses, medical services provided, social and economic conditions, agency evaluation of personal information, and medical data. Section 431.306 requires the State Medicaid agency to have criteria for specifying the conditions for use and release of data, to restrict access to personal information to persons subject to standards of confidentiality comparable to those of the agency; to not publish names of applicants or recipients; to obtain consent, whenever possible, from a family or individual, before responding to a request for data from an outside source; to apply its policies to *all* requests for information from outside sources; and, in response to a subpoena for data or testimony, inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

We believe that these current regulations adequately specify requirements to safeguard information and need very little revision to protect information received specifically under Section 1137 of the Act. However, we do propose to add a section to cover the statutory requirement concerning written agreements, as discussed above in "G". In order to further conform regulations to the law, we also propose to revise § 431.305(b). Types of information to be safeguarded, by adding a new subparagraph (6) to show that data received under Section 1137 of the Act is to be safeguarded as well as the types of information already listed. (SSA and IRS, when disclosing wage and other income information available under 6103(l) of the Internal Revenue Code, would impose their own safeguarding requirements on the State Medicaid agency.) The agency must abide by these requirements in addition to Medicaid regulations. We would also revise § 431.306(d) to show that the State Medicaid agency does not need to obtain consent from an individual or family to obtain data to verify income, eligibility, and the amount of medical assistance payments required by section 1137 of the Act.

I. Notice to Applicants and Recipients.

Section 1137(a)(6) of the Act requires the State Medicaid agency to notify applicants and recipients at the time of application and periodically thereafter that information about them will be exchanged and used to verify income, eligibility, and medical assistance payments. We propose in § 435.945(c) to require a State Medicaid agency to notify, in writing, new applicants at application and recipients at redetermination. We do not propose that the State Medicaid agencies notify all current recipients when the law becomes effective; a State may wait

until the next redetermination is made, but no later than April 1, 1986 (12 months after the effective date of the legislation).

J. Reimbursement for Cost of Data

Section 1137(a)(7) of the Act requires accounting systems to be utilized that assure programs providing data receive appropriate reimbursement from the agency receiving the data. We expect State Medicaid agencies to reimburse programs for reasonable costs incurred, including new developmental costs, for providing information under Section 1137 of the Act. (New developmental costs are those associated with the furnishing of data to the agencies entitled to receive the information under the proposed regulations.) Each State Medicaid agency would be expected to maintain an accounting system to keep track of exchanges of information so that appropriate costs and reimbursement amount can be calculated. As usual, the agency must allocate costs incurred in obtaining and using information across all programs that utilize the data for eligibility verification and benefit determinations.

We would require each State Medicaid agency to specify how it would reimburse reasonable costs when entering into an agreement with another agency with which it exchanges data (§§ 431.306(g) and 435.945(e)).

We also expect State Medicaid agencies and other agencies involved in the exchange of data to minimize costs by sharing the data and the cost of it. Agencies within a State should coordinate with each other to make requests and share the information.

Costs that the State Medicaid agency incurs for purposes of SIEVS development and operation required under these regulations would be subject to Federal financial participation at the normal administrative matching rate and would be pooled with all other eligibility-related costs and distributed according to the agency's approved cost allocation plan. Agencies must seek prior approval according to Federal guidelines and regulations (e.g., 45 CFR 95.601 ff.) for automated data processing costs related to implementation and operation. If no changes are needed, the State Medicaid agency would have to work within appropriate existing systems.

K. Special Requirements for Use of IRS Data

In order to protect individuals, Congress specified extra precautions concerning the use of unearned income information received from IRS. Section 1137(c) of the Act requires the State Medicaid agency to verify, independently, unearned income before terminating, denying, suspending or reducing any benefits, to inform the individual of the agency's findings (if there is to be an adverse action), and to give an opportunity for a hearing.

Although Congress did not indicate that the State Medicaid agency must independently verify all information (rather than just unearned income information), we expect that a State Medicaid agency will continue to verify information it receives where its experience indicates that independent verification is necessary.

Our proposed revisions add a new section § 435.955, Additional requirements regarding the use of information released by the Department of the Treasury, which parallels Section 1137 of the Act concerning which data must be verified. To implement procedures for verifying the data, we propose in § 435.955(b) to follow the proposals of the Conference Committee. (H. Conf. Rep. No. 98-861, 98th Congress, 2d Session 1411 (1984).) Section 435.955(b) would require the State Medicaid agency to verify the information by asking the applicant or recipient to verify the amount of the unearned income and resource that generated that unearned income or by asking the source of the unearned income to verify the amount if income resource. If the State Medicaid agency were to ask the applicant or recipient to verify the information, it should specify that the individual respond within a certain period of time and it would have to explain clearly the information the agency has and its possible relevance on benefits and be as unintimidating in tone as possible. Under proposed § 435.955(c)(2) if the individual were to fail to respond timely to the notice, the State Medicaid Agency would have to proceed to deny, terminate, reduce, or suspend benefits based on the failure to cooperate.

Proposed § 435.955(c)(1) would implement Section 1137(c)(2) of the Act by requiring the State Medicaid agency to notify the applicant or recipient of its findings in case of adverse action and give an opportunity for a hearing (in accordance with §§ 431.200 through § 431.250). The State Medicaid agency will continue to notify an applicant or recipient of its findings in case of an adverse action and of his or her rights to a hearing, as required by §§ 431.200-431.250, when the adverse action stems from a cause other than verified unearned income.

L. Delay of Effective Date

The requirements of Section 1137 of the Act are effective April 1, 1985. However, as permitted by Section 2651(l)(2) of Pub. L. 98-369, under proposed regulation § 435.965(a), Delay of Effective Date, the Secretary may grant a delay in the effective date (but not beyond September 30, 1986) if the State Medicaid agency submits, within 90 days of the effective date of the final rule, a plan describing a good faith effort to come into compliance with the requirements of Section 1137 of the Act.

The Secretary may not, however, delay the effective date of the provisions concerning procedures for protecting individuals *vis a vis* the use of unearned income information from the IRS (§ 435.965(b)).

Corresponding Technology Revisions

In addition to the revisions above, we are proposing to make the following technical revisions to correspond to the major revisions and statute:

A. §§ 435.912 and 435.919

We propose to revise the titles of these sections to be more specific concerning their respective subjects. We would do this because both titles refer generally to notices and the new regulations would require two additional notices, as required by law. The title of § 435.912 would be "Notice of agency's decision concerning eligibility" instead of "Adequate notice"; the title of § 435.919 would read "Timely and adequate notice concerning adverse actions" rather than "Timely and adequate notice."

B. Section 435.910

(1) Because we would now require the State Medicaid agency to require SSNs as a condition of eligibility subparagraph (b)(1) and paragraph (c) and (d), which contain requirements for implementing Section 7 of the Privacy Act of 1974 , Pub. L. 93-579 (5 U.S.C. 552a, note), would be removed and reserved. Those provisions:

(a) require a State Medicaid agency to inform an applicant or recipient whether disclosure of his or her SSN is required or voluntary;

(b) Prohibit the State Medicaid agency from requiring the SSN unless it meets certain stated criteria;

(c) when disclosure of the SSN is voluntary, prohibit the State Medicaid agency from denying eligibility based on the applicant not furnishing the SSN when its disclosure is voluntary; and

(d) require the State Medicaid agency to inform the applicant that he or she is

not required to disclose or apply for an SSN.

(2) Paragraph(b)(3) requires the State Medicaid Agency to inform the applicant of the uses the State Medicaid agency will make of the SSN. We propose to include specifically in paragraph (b)(3) the use of the SSN for verifying income and eligibility, and the amount of medical assistance payments, under § 435.940 because of the statutory requirement (Section 1137(a)(6) of the Act) that applicants and recipients be advised that information about income and eligibility will be verified.

(3) Paragraph (e), which discusses what the State Medicaid agency must do when an applicant wishes to secure an SSN, would have removed from it the phrase regarding the applicant's desire to secure a SSN, since he or she would have no objection.

Regulatory Impact Statements

Introduction

As discussed both in the joint preamble and below, we have determined that neither a regulatory impact analysis nor a regulatory flexibility analysis is required for these proposed regulations. Nevertheless, we recognize that commenters on these proposals will be concernd with potential impacts, and that the largest savings would occur in the Medicaid program and would eventually exceed $100 million annually. Therefore, we have provided a voluntary impact analysis. We invite comments on this analysis, especially from the States and State agencies that would be affected by these proposals, and will respond in the final rule to comments received on this analysis and these proposed rules.

We wish to point out that these proposed regulations relate only to verification of information that applicants and recipients are currently requested to provide under existing eligibility rules. We are *not* proposing to change the criteria and standards under which eligibility is determined. We are only proposing to implement systems that will ensure that the information provided is complete and accurate, and that eligibility determinations are made correctly. We are very concerned that benefits not be granted or terminated inappropriately, and are therefore providing that appropriate notice, appeals, and confidentiality procedures are followed. In addition, because we are concerned that the information is adequately safeguarded against unauthorized disclosure, we are also expanding Medicaid requirments to include safeguard specified by SSA and IRS

Executive Order 12291

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in:

1. An annual effect on the national economy of $100 million or more;

2. A major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

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

These proposed rules would result in a reduction of Federal and State program expenditures and an increase in Federal and State administrative costs. These savings would potentially exceed $100 million annually, but they result from the statutory requirements of section 2651 of Pub. L. 98–369, not from these rules. The amount of costs would depend on decisions made on how to implement the statutory requirements operationally, and thus are subject to our discretionary authority. However, we do not expect these costs to exceed $100 million annually or meet any of the other criteria for major rules. Therefore, we have determined that a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires that a regulatory flexibility analysis be performed and made available for each proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. Under the RFA, small entities include small businesses, nonprofit organizations that are not dominant in their field, and governmental jurisdiction of less than 50,000 population. States and individuals are not treated as small entities under the RFA. Since these proposed rules would affect States and individuals, we have determined, and the Secretary certifies in accordance with 5 U.S.C. 605(b), that they would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Potential Medicaid Savings

To the extent that implementation of integrated State income and eligibility verification system results in identification of Medicaid applicants and recipients whose ineligibility for Medicaid benefits would otherwise not be discovered, these proposed rules could result in Federal and State savings related to Medicaid program expenditures. HCFA actuaries estimate that implementation of payment integrity and income verification systems eventually could save about $100 million a year in Federal Medicaid program expenditures once the State systems are fully operational. Initial implementation and ongoing operational costs would have to be subtracted from the program savings to determine the net costs or savings of this proposal. We do not expect savings to be substantial in the first two years after these regulations becomes effective, because of the difficulties in setting up and implementing such complex systems.

The Federal Medicaid program savings would result from three aspects of the total income and eligibility verification system:

- $50 million would occur without action by HCFA or State Medicaid agencies as a direct result of termination of ineligible individuals from the SSI and AFDC programs, as a result of new or expanded data matches on unearned income.
- $20 million in Federal savings would result from matching by States of Medicaid program eligibility and income data against other data on unearned income and taking action to terminate ineligible individuals from medical assistance-only programs.
- An additional $30 million in Federal Medicaid program savings might result from implementation of a data match system for wages; i.e., the potential availability of health insurance through employment, or the potential to purchase insurance through employment related programs. This would enable increased savings from third-party liability initiatives.

We expect that it would take three years to achieve the $70 million of annual Federal savings related to matching on unearned income. However, the quarterly reporting data match system for wages is not required to be in place until September 1, 1988. Consequently, the full savings would probably not be achieved until FY 1989 or FY 1990.

Potential Medicaid Implementation and Operating Costs

As discussed earlier in this preamble, the results of testing formats will not be available until April, 1985, and other aspects of potential system guidelines are still under development. In the

absence of detailed guidelines and system requirements, we cannot estimate the costs of implementing or operating State income and eligibility verification systems. However, we can indicate a number of factors that would affect the magnitude of the ultimate costs.

First, we expect States would modify existing State eligibility and information systems, rather than develop new systems. However, Wyoming and Puerto Rico now have no automated Medicaid data processing at all, and may have to develop new systems to access information in an automated fashion.

Where there are existing systems, those systems would have to be converted to us Social Security numbers as required by these proposed rules, and would have to be converted to use the standard formats developed. This would result in implementation costs and increased operating costs beyond what States currently expend. For each State, the actual increase in administrative costs would be dependent on the current level of automated systems and wage and income matching in the State. Currently 17 States have integrated their Medicaid eligibility determination systems with eligibility determinations for other means-based programs that would be covered under these proposed eligibility and income verification requirements.

Further, each of the following activities and procedures would require design, development, and implementation costs:

- Data matching.
- Data management.
- Data security.
- Determination of the meaning of successful matches.
- Investigation and independent verification of meaningful matches.
- Applicant and recipient notification and follow-up.

Once implemented, each of these activities and procedures would require on-going operating costs, which would also be incurred for tape exchanges and legal services.

Depending on the particular decisions that are made on how to implement these proposed regulations operationally, the resulting costs could be very large or relatively small. We believe the necessary changes can be done at relatively low cost, primarily making minor modifications to existing systems. Nonetheless, the costs of such systems raise the likelihood that the savings resulting from implementation of these proposals could be exceeded by the costs for at least the first years, during which implementation costs would be at their highest, while savings would depend on the success and intensity of the implementation effort, and would occur later. Due to the risk of adverse cost outcomes, we expect the costs and benefits of implementing these proposals would be closely monitored by the States and by the Federal agencies involved.

Potential Changes in Medicaid Enrollment

Many recipients participate in more than one of these programs, and eligibility for one program is often related to eligibility for other programs. For example, AFDC and most SSI recipients are usually eligible for Medicaid. However, eligibility requirements are not indentical between any two programs. Therefore, even if an individual or family loses eligibility under one program, they may retain eligibility or be eligible on another basis for other programs.

It is estimated the matching on unearned income would eliminate about 30,000 individuals from the SSI rolls. Many of these individuals would also lose their categorically needy Medicaid eligibility, but some could be expected to be eligible for Medicaid under the medically needy option that 34 States currently follow. Similarly, some of the individuals eliminated from the AFDC rolls would come back onto the Medicaid rolls under the medically needy option.

Address for Comments

Address comments concerning the Medicaid provisions in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BVERC–321–P, P.O. Box 26676, Baltimore, Maryland 21235.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building Washington, D.C. 20503, Attention: Faye Iudicello.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C. or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Paperwork Burden

In Title 42, §§ 431.306(g), 435.910, 435.919, 435.920, 435.940, 435.945, 435.955, 435.960 and 435.965 of this rule contain information collection requirements. HCFA will request approval of these information collection requirements under Section 3504(h) of the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting requirement.

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

A. 42 CFR Chapter IU, Part 431 is proposed to be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. Subpart F is amended as set forth below:

Subpart F—Safeguarding Information on Applicants and Recipients

The authority citation for Subpart F reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

a. Section 431.300 is revised by designating the current contents as paragraph (a) and adding a new paragraph (b) as follows:

§ 431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff.), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and

(2) The information is adequately protected against unauthorized disclosure for other purposes, in accordance with regulations established by the Secretary.

b. The introductory language of § 431.305(b) is repeated for the reader's convenience and a new subparagraph (b)(6) is added as follows:

§ 431.305 Types of information to be safeguarded.

* * * * *

(b) This information must include at least—

* * * * *

(6) Any information received for verifying income eligibility and amount of medical assistance payments (see § 435.940ff.). Income information received from SSA or the Internal Revenue must be safeguarded according to the requirements of the agency that furnished the data.

c. Section 431.306 is amended by revising paragraph (d) and adding a new paragraph (g) as follows:

§ 431.306 Release of information.

* * * * *

(d) The agency must obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment under section 1137 of this Act and §§ 435.940–435.965 of this chapter.

If, because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information.

* * * * *

(g) Before requesting or exchanging information with other agencies to verify income, eligibility and the amount of medical assistance payments under § 435.940–435.965 of this chapter, the agency must execute data exchange agreements with those agencies. The agreements, at a minimum, must specify—

(1) The information to be exchanged;

(2) All agency officials with the authority to request income and eligibility information;

(3) The methods, including the formats to be used, and the timing for requesting and providing the information;

(4) The safeguards limiting the use and disclosure of the information as required by Federal or State law or regulations; and

(5) The method the agency will use to reimburse reasonable costs of furnishing the information.

2. Subpart P is amended as set forth below:

Subpart P—Quality Control

The authority citation for Subpart F reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

a. Section 431.800 is amended by revising paragraph (f) as follows:

§ 431.800 Medicaid quality control (MQC) system.

* * * * *

(f) *Access to records.* The agency, upon request, must provide HHS staff with access to all records pertaining to its MQC reviews to which the State has access, including information available under Part 435, Subpart J, of this chapter.

b. Section 431.804 is amended by revising paragraph (c)(6) as follows:

§ 431.804 Disallowance of Federal financial participation for erroneous State payments (effective January 1, 1984).

* * * * *

(c) Setting of State's payment error rate.

* * * * *

(6) If a State fails to cooperate in completing a valid MQC sample or individual reviews in a timely and appropriate fashion as required, which includes obtaining and using information available under Part 435, Subpart J, of this chapter, HCFA will establish the State's payment error rate based on either—

(i) A special sample or audit

(ii) The Federal subsample; or

(iii) Other arrangements as the Administrator may prescribe.

B. 42 CFR Chapter IV, Part 435 is proposed to be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

Suppart J is amended as set forth below:

Suppart J—Eligibility in the States and District of Columbia

1. The table of contents for Supbart J is amended by revising the titles of §§ 435.912 and 435.919, by adding a new undesignated centered heading immediately following the title of § 435.930, and by adding titles for new §§ 435.940, 435.945, 435.955, 435.960, and 435.965 as follows:

Suppart J—Eligibility in the States and District of Columbia

* * * * *

Sec.

435.912 Notice of agency's decision concerning eligibility

* * * * *

435.919 Timely and adequate notice concerning adverse actions.

* * * * *

Furnishing Medicaid

435.930 Furnishing Medicaid.

Income and Eligibility Verification

435.940 Basis and scope.

435.945 General requirements.

435.955 Additional requirements regarding the use of information released by the Department of the Treasury.

435.960 Standardized formats for maintaining information for verifying income and eligibility.

435.965 Delay of effective date.

Authority Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.4, the definition of "SWICA" is added, alphabetically after "SSI," as follows:

§ 435.4 [Amended]

* * * * *

"SWICA" means State wage information collection agency under Section 1137(a) of the Act. It is the State agency administering the State unemployment compensation law; a separate agency administering a quarterly wage reporting system; or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data.

A SWICA that is not a UC agency maintains wage information that:

(1) Contains the SSN, full name, wages earned for the period of the report, and an identifier of the employer;

(2) Includes all employers covered by the States' UC law;

(3) Accumulates earnings reported by employers for no longer periods than calendar quarters;

(4) Is reported to the SWICA within 30 days after the end of the quarter;

(5) Is machine readable; and

(6) Is accessible to agencies in other States that have executed agreements as required in § 431.306(g) of this chapter.

3. In § 435.910, the introductory language to paragraph (b) is repeated for the convenience of the reader, paragraphs (a), (b)(3), the introductory language of paragraphs (e), and (e)(3) are revised to read as follows, paragraphs (b)(1), (c) and (d) are removed and reserved, and a new paragraph (g) is added as follows:

§ 435.910 Use of social security number.

(a) The agency must obtain, as a condition of eligibility, the social security number (SSN) of each individual (including children) for whom Medicaid services are requested.

(b) The agency must advise the applicant of—

(1) [Reserved]

* * * * *

(3) The uses the agency will make of the SSN, including its use for verifying income, eligibility, and amount of medical assistance payments under § 435.940.

(c) [Reserved]

(d) [Reserved]

(e) If an applicant cannot recall his SSN or has not been issued a SSN the agency must—

* * * * *

(3) Either send the application to SEA or, if there is evidence that the applicant has previously been issued a SSN, request SSA to furnish the number.

* * * * *

(g) The agency must verify the SSN of each applicant and recipient with SSA, as prescribed by the Commissioner, to insure that the SSN was issued to that individual.

4. The title of § 435.912 is revised as follows:

§ 435.912 Notice of agency's decision concerning eligibility.

5. Section 435.919 is revised as follows:

§ 435.919 Timely and adequate notice concerning adverse actions.

(a) The agency must give recipients timely and adequate notice of proposed action to terminate, discontinue, or suspend their eligibility or to reduce or discontinue services they may receive under Medicaid.

* * * * *

6. Section 435.920 is amended by revising paragraph (b) as follows:

§ 435.920 Verification of SSNs.

* * * * *

(b) If the case record does not contain the required SSNs, the agency must obtain them and meet other requirements of § 435.910.

* * * * *

7. A new undesignated centered heading and § 435.940 is added as follows:

Income and Eligibility Verification Requirements

§ 435.940 Basis and scope.

(a) Section 1137 of the Act requires certain Federally-funded, State-administered public assistance programs to establish procedures for obtaining, using and verifying information relevant to determinations as to eligibility and the amount of medical assistance payments. Section 1902(a)(4) of the Act allows the Secretary to prescribe methods of administration found necessary for the proper and efficient operation of a State's Medicaid plan.

(b) The agency must maintain information, as enumerated in § 435.960, to exchange for the purpose of enabling any agency listed in § 435.945 to verify income, eligibility of, and the amount of medical assistance payments for, its applicants and recipients.

8. A new § 435.945 is added as follows:

§ 435.945 General requirements.

(a) The agency must obtain and use information from the sources described in this paragraph for verifying Medicaid eligibility and the amount of medical assistance payments unless the agency can demonstrate to the Secretary that it has alternate sources of information that furnish information as timely, complete and useful for verifying Medicaid eligibility and the amount of medical assistance payments as that described below; the Secretary will consult with the Secretary of Agriculture and the Secretary of Labor before determining whether the agency may use an alternate source. The information that must be obtained and used, the timetable to follow, and the sources from which to request it, are:

(1) Except as provided in paragraph (a)(7) of this section, State wage information maintained by the SWICA during the application period and on a quarterly basis;

(2) Information about net earnings from self-employment, wages and payment of retirement income maintained by SSA and available under Section 6103(l)(7)(A) of the Internal Revenue Code of 1954, during the application period and on a yearly basis;

(3) Information about benefit and other eligibility related information available from SSA under titles II and XVI of the Social Security Act during the application period and on a yearly basis;

(4) Unearned income information from the Internal Revenue Service available under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954, during the application period and on a yearly basis;

(5) Except as provided in paragraph (a)(7) of this section, unemployment compensation information maintained by the agency administering State unemployment compensation laws (under the provisions of Section 3304 of the Internal Revenue Code and Section 303 of the Act) as follows:

(i) For institutionalized applicants, during the application period;

(ii) For all other applicants, during the application period and for each of the three subsequent months;

(iii) For any recipient that reports a loss of employment, at the time the recipient reports that loss and for each of the three subsequent months.

(iv) For any applicant (including an institutionalized applicant) or recipient that is found to be receiving unemployment compensation benefits, for each month until the benefits are reported to be exhausted.

(6) Any additional income, resource, or eligibility information relevant to determinations concerning eligibility or amount of medical assistance payments available from agencies in the State or other States administering the following programs as provided in the agency's State plan:

(i) AFDC;

(ii) Medicaid;

(iii) State-administered supplementary payment programs under Section 1616(a) of the Act;

(iv) SWICA;

(v) Unemployment compensation;

(vi) Food stamps; and

(vii) Any State program administered under a plan approved under Title I (assistance to the aged), X (aid to the blind), XIV (aid to the permanently and totally disabled), or XVI (aid to the aged, blind, and disabled in Puerto Rico,

Guam, and the Virgin Islands) of the Act.

(7) *Exception:* In cases where the individual is institutionalized, the agency needs to obtain and use information from SWICA only during the application period and on a yearly basis, and from unemployment compensation agencies only druing the application period. An individual is institutionalized for purposes of this section when he or she is required to apply his or her income to the cost of medical care as required by §§ 435.725, 435.733, and 435.832.

(b) The agency must furnish to other agencies in the State and in other States and to Federal programs income and medical assistance payment information for verifying eligibility or benefit amounts for the programs listed in paragraph (a)(6) of this section. In addition, the agency must furnish income and eligibility information to—

(1) The child support program under part D of title IV of the Act; and

(2) SSA for old age, survivors and disability benefits under title II and for SSI benefits under title XVI of the Act.

(c) If information obtained in accordance with this section affects a recipient's eligibility or amount of medical assistance payments, the agency must, within 20 days of receipt of the information, formally notify the recipient, in accordance with § 435.919, of any adverse action it proposes concerning the recipient's eligibility or amount of medical assistance payments. If the agency verifies information, either as determined appropriate by agency experience or as required by § 435.955, it must do so within the same 20 days period. The requirements of this paragraph do not relieve the agency of its liability for erroneous payments, as defined by §§ 431.800(b) and 431.804(b) of this chapter, that occurred during the period before the agency's receipt of the information.

(d) The agency must review the information (obtained under §§ 435.940 through 435.960) and give priority to action on the information most likely to be productive in identifying and preventing erroneous eligibility and medical assistance payment determinations. The agency must develop and submit a plan (as part of its State plan) that describes its methods for reviewing and determining the priority of information and its ordering of information for follow-up action.

(e) The agency must inform all applicants in writing at the time of application that the agency will obtain and use information available to it under Section 1137 of the Act to verify income, eligibility and amount of medical assistance payments. The agency must give each recipient the same notice yearly or whenever it redetermines eligibility, but in no case may the initial notice to recipients be given later than April 1, 1986.

(f) The agency must, upon request, reimburse another agency in paragraph (a) of this section for reasonable costs incurred in furnishing information, including new developmental costs associated with furnishing the information to another agency.

(g) The agency must provide reports as the Secretary prescribes for the purposes of determining compliance with these regulations and evaluating the effectiveness of the income and eligibility verification system.

9. A new § 435.955 is added as follows:

§ 435.955 Additional requirements regarding the use of information released by the Department of the Treasury.

(a) Based on information concerning an applicant's or recipient's unearned income the agency receives from the Department of Treasury (Internal Revenue Service) (under Section 6103(l)(7)(B) of the Internal Revenue Code of 1954), the agency may not terminate, deny, suspend, or reduce benefits to that individual until it has taken appropriate steps to verify the information, independently, relating to—

(1) The amount of the income and resource that generated the income involved:

(2) Whether the applicant or recipient actually has (or had) access to the resource or income (or both) for his or her own use; and

(3) The period or periods when the individual actually had the resource or income or both.

(b) The agency must verify the information by either—

(1) Requesting the entity from which the individual received the unearned income to verify the fact and amount of the unearned income and resource that generated the income; or

(2) Sending the applicant or recipient a letter informing that individual of the information received and asking him or her to respond within a specified period. The letter must clearly explain the information the agency has and its possible relevance to the individual's past or future eligibility, and be as neutral in tone as possible.

(c)(1) If the source of the unearned income or the applicant or recipient verifies the information, and the agency intends to reduce, suspend, terminate or deny medical assistance payments based on the information, the agency must send the applicant or recipient a notice of the action to be taken and include information on the right to appeal and opportunity for a hearing under §§ 431.200 through 431..250 of this chapter (see also § 435.912 and 435.919).

(2) If the applicant or recipient fails to respond after reasonable attempts to contact him or her, the agency must proceed to deny, terminate, reduce or suspend benefits based on the applicant or recipient's failure to cooperate.

(3) If the applicant or recipient disputes the information, the agency must obtain evidence (from the source of the unearned income, applicant or recipient, or otherwise) to substantiate any negative case action that it may take.

10. A new § 435.960 is added as follows:

§ 435.960 Standardize formats for obtaining and using information for verifying income and eligibility.

(a) The agency must maintain for all applicants and recipients within an agency file the SSN, surname and other data elements in a format that at a minimum allows the agency to obtain and use eligibility and income information from the agencies listed in §435.945. The agency must request information from—

(1) SWICA, unemployment compensation agencies, and agencies of other States, as prescribed by the Secretary;

(2) SSA, as prescribed by the Commissioner of SSA; and

(3) The Internal Revenue Service, as prescribed by the Commissioner of the Internal Revenue Service.

(b) Exchanges of eligibility and income information with other agenices in the State and in other States must be made in the manner prescribed by the Secretary and must be completed in a timely manner.

(c) The agency must compare the information obtained from each data exchange against respective information on applicants and recipients before producing and disseminating reports to be utilized for verification.

(d) The agency must also maintain a reporting system on the disposition of all cases for which income and eligibility information was received to assure the timely and efficient utilization of the information.

11. A new § 435.965 is added as follows:

§ 435.965 Delay of effective date.

(a) If the agency submits, by [90 days after publication of the final rule], a plan describing a good faith effort to come into compliance with the requirements

of Section 1137 of the Act and of §§435.910 and 435.940 through 435.960 of this subpart, the Secretary may, after consultation with the Secretary of Agriculture and the Secretary of Labor, grant a delay in the effective date of §435.910 and §§435.940 through 435.960, but not beyond September 30, 1986.

(b) The Secretary may not grant a delay of the effective date of Section 1137(c) of the Act, which is implemented by §435.955 (a) and (c). (The provisions of these statutory and regulation sections require the agency to follow certain procedures before taking any adverse actions based on information from the Internal Revenue Service concerning unearned income.)

(Catalog of Federal Domestic Assistance Porgram No. 13.774, Medical Assistance)

Dated: November 7, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 4, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–6082 Filed 3–13–85; 8:45 am]

BILLING CODES 4150–04; 4510–30; 4190–11; 3410–30; 4120–01

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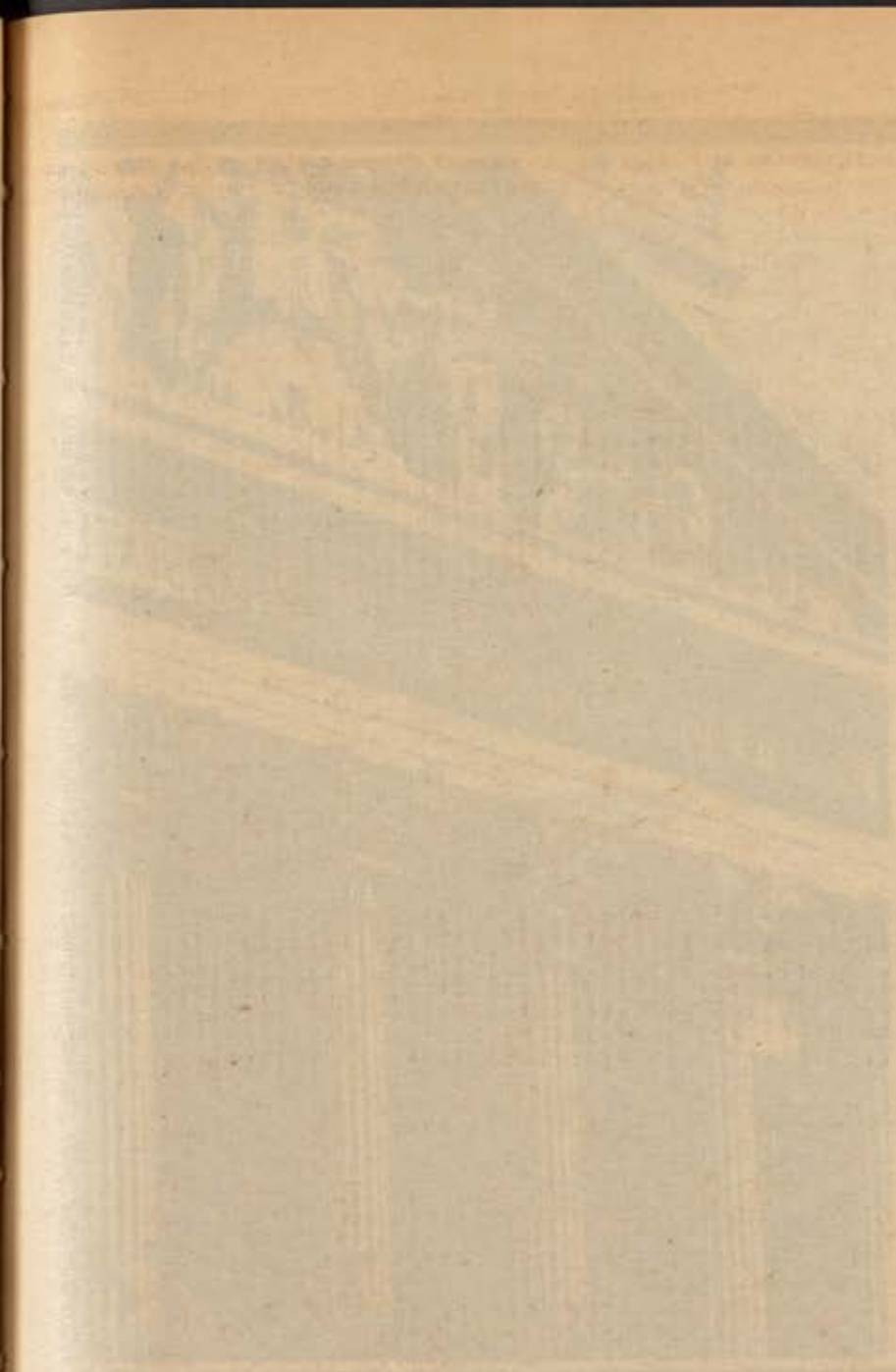
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